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In the Supreme Court of the United States

OCTOBER TERM, 1977

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

v.

SADIE E. COLE, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

WADE H. McCREE, JR.,
Solicitor General,
JAMES W. MOORMAN,
Assistant Attorney General,
JACQUES B. GELIN,
CHARLES E. BIBLOWIT,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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No.

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

v.

SADIE E. COLE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the Secretary of Housing and Urban Development, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*) is not yet reported. The opinion of the district court (App. C, *infra*) is unreported.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*) was entered on November 14, 1977. On February 3, 1978, Mr. Justice Brennan extended the time

within which to file a petition for a writ of certiorari to and including April 13, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether tenants who are ordered to vacate a housing project that has been conveyed to the Department of Housing and Urban Development after default by the project's sponsor are "displaced persons" entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, where the order to vacate is unrelated to the Department's acquisition of the property.

STATUTE INVOLVED

Section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. 4601(6), provides:

> The term "displaced person" means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; * * *.

STATEMENT

The Sky Tower apartment complex in Southeast Washington, D.C., was built in the 1950s. The 19 buildings in the complex contained 217 small "garden"

apartments. In 1970, a nonprofit corporation purchased Sky Tower and attempted to rehabilitate the complex by converting the units into larger apartments intended for low and moderate income families. The Department of Housing and Urban Development provided assistance to the corporation and the tenants by insuring the mortgage on the complex, subsidizing the mortgage interest payments, and paying rent supplements for a number of the households (App. A, *infra*, pp. 2A–3A).

In spite of this assistance, the rehabilitative effort failed. After the original general contractor defaulted on performance of the rehabilitation work, the Department took the unusual step of permitting an increase in the amount of the insured mortgage, along with a substitution of contractors. But the second contractor also abandoned work and, in addition, placed a lien on the property, whereupon the mortgagee declared the nonprofit owner in default and foreclosed (App. A, *infra*, p. 3A). Then the mortgagee, exercising its rights under the mortgage insurance contract, conveyed title to the project to the Department in exchange for the statutory mortgage insurance benefits. The Department took title in June 1973 (App. A, *infra*, p. 3A).

The Department hired a management firm to operate the project and executed new month-to-month leases with the tenants on the same terms as their previous leases. By September 1974, however, the Department determined that in view of the deteriorated

condition of the project, further efforts at rehabilitation would be futile. Department officials decided that the project should be demolished and the property sold (App. A, *infra*, p. 3A). Accordingly, in September 1974 the management firm gave notice to the remaining 72 families residing in Sky Tower to vacate their apartments. Tenants who were current in their rent payments were granted $300 for moving expenses and were exempted from their last month's rent (App. A, *infra*, pp. 3A–4A).

Respondents, a group of Sky Tower tenants, then brought this action in the United States District Court for the District of Columbia, challenging the Department's decision to raze Sky Tower rather than rehabilitate it and seeking injunctive relief and damages. One of their claims was that the Department had failed to provide them with benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Relocation Act), 84 Stat. 1894, 42 U.S.C. 4601 *et seq.* (App. A, *infra*, p. 4A).

The district court issued a preliminary injunction barring the Department from further demolition or evictions at the project, requiring it to rehabilitate certain of the buildings, and ordering it to offer the tenants who had moved out the opportunity to move back in at the Department's expense (App. A, *infra*, pp. 4A–5A).[1] *Cole* v. *Lynn*, 389 F. Supp. 99 (D. D.C.).

[1] Only 18 of the 55 families who had vacated the project pursuant to the order elected to return after the injunction was entered (App. A, *infra*, p. 18A).

After extended proceedings in the district court and the court of appeals, the Department reached an agreement with the District of Columbia government under which Sky Tower would be transferred to the District of Columbia, with the Department providing substantial subsidies for its continued operation (App. A, *infra*, p. 7A n. 17).

Meanwhile, both parties moved for summary judgment on respondents' claim that the tenants who had vacated their apartments were entitled to Relocation Act benefits. The district court granted respondents' motion in part (App. C, *infra*, pp. 52A–54A), holding that tenants who had vacated their apartments as a result of the Department's notice to quit were entitled to a prorated portion of the Relocation Act benefits covering the period between the time they left the project and August 1, 1975, the date that they were permitted to return under the district court's injunction (App. A, *infra*, p. 7A).

The court of appeals affirmed in part and reversed in part, with one judge dissenting (App. A, *infra*, p. 19A). The court held that the tenants who left Sky Tower after receiving the Department's notice to quit were "displaced persons" within the meaning of Section 101(6) of the Uniform Relocation Act, 42 U.S.C. 4601(6), and were therefore entitled to the Act's benefits. In addition, the court held that those tenants who did not return to Sky Tower when the district court's injunction made their return possible were nevertheless entitled to full Relocation Act benefits, not prorated benefits terminating when they could

have returned to the project, as the district court had held (App. A, *infra*, pp. 17A–19A).

REASONS FOR GRANTING THE WRIT

1. The decision of the court of appeals in this case conflicts with the decisions of three other courts of appeals on an important question under an important statute, the Uniform Relocation Act.

The Act provides a variety of benefits to persons who meet the statutory requirements for eligibility as "displaced persons." Under specified circumstances, the Act provides "moving and related expenses," 42 U.S.C. 4622; "replacement housing payments" of up to $15,000 for homeowners and $4,000 for tenants, 42 U.S.C. 4623, 4624; and "relocation assistance advisory services," 42 U.S.C. 4625. The definition of "displaced person" is contained in Section 101(6) of the Act, 42 U.S.C. 4601(6), which provides in relevant part:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property, * * * or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; * * *.

The definition contains two clauses: the "acquisition clause," which reaches those who move as a result of an actual acquisition of property for a program or project undertaken by a federal agency,

and the "written order clause," which reaches those who move as a result of a written order by the acquiring agency to vacate the premises for a federal program or project, even where the proposed acquisition never takes place.

The principal issue presented by this case is whether the written order clause applies only to tenants who are directed to vacate in connection with an acquisition or proposed acquisition of property, or whether that clause extends the benefits of the Act to all tenants who are ordered to vacate property previously acquired by a federal agency. A second related issue involves the meaning of the phrase, "for a program or project undertaken by a Federal agency," which designates the purpose for which the acquisition (or, on one view, the written order) must be intended.

On the first issue, the decision of the court of appeals here is in conflict with the decision of the Court of Appeals for the Seventh Circuit in *Alexander* v. *U.S. Department of Housing and Urban Development*, 555 F. 2d 166, petition for writ of certiorari pending, No. 77-874,[2] and with the decision of the Court of Appeals for the Eighth Circuit in *Harris* v. *Lynn*, 555 F. 2d 1357, affirming 411 F. Supp. 692 (E.D. Mo.), certiorari denied, October 31, 1977 (No. 77-5233).

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[2] In our Brief for the Respondent in No. 77-874, we have suggested that the petition in that case be considered together with the present petition. As stated there, we do not oppose the granting of the petition in that case together with our petition here.

The court below held that respondents were "displaced persons" under the written order clause because the Department "'acquired' Sky Tower within the common meaning of that word" (App. A, *infra*, p. 9A)—thus becoming, in the court's view, the "acquiring agency" within the meaning of Section 101 (6)—and because the Department subsequently gave the tenants written orders to move (App. A, *infra*, pp. 9A–10A). For both the Seventh and the Eighth Circuits, however, that is not enough. Those courts read the Act as requiring that the order to vacate be issued in connection with an acquisition or contemplated acquisition of property. See *Alexander* v. *U.S. Department of Housing and Urban Development*, *supra*, 555 F. 2d at 170; *Harris* v. *Lynn*, *supra*, 411 F. Supp. at 695, opinion adopted, 555 F. 2d at 1359. It is not enough, in their view, that the tenants be ordered to vacate property previously acquired by a federal agency.

On the second issue, the decision below conflicts with the Seventh Circuit's decision in *Alexander* and with the decision of the Court of Appeals for the Second Circuit in *Caramico* v. *Secretary of the Department of Housing and Urban Development*, 509 F. 2d 694. The court below held that the written orders to quit were issued "'for a program or project undertaken by a Federal agency'" because they were issued in anticipation of the demolition of Sky Tower (App. A, *infra*, p. 10A).[3]

[3] "Moreover, it is clear that the Sky Tower tenants were ordered to vacate their apartments 'for a program or project undertaken by a Federal agency,' namely, the demolition of the buildings" (App. A, *infra*, p. 10A).

Again, the other courts read the statute to require more. The Seventh Circuit stated in *Alexander* (555 F. 2d at 170):

> We fail to see how a decision to terminate a project can itself become a project in the absence of some indication that the decision to terminate and the order to vacate constitute a prelude to some governmental undertaking amounting to a program designed for the benefit of the public as a whole.[4]

And the Second Circuit in *Caramico,* interpreting the acquisition clause, held that the federal government's involuntary acquisition of property by the operation of mortgage insurance provisions is not an acquisition "'for a program or project undertaken by a Federal agency'" within the meaning of the Act. The court stated (509 F. 2d at 698–699):

> Thus, it is clear that the Act contemplates normal government acquisitions, which are the

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[4] The court of appeals here attempted to distinguish this holding of *Alexander* on the basis that there the Department "had made no plans for the future of the buildings," whereas here the demolition of Sky Tower was intended to help "eliminate blight" and to lead to revitalization of the area (App. A, *infra*, p. 11A n. 27). The court here appears to have squarely held, however, that the demolition itself constitutes "a program or project" within the meaning of the statute (App. A, infra, p. 10A). Moreover, since purposes such as eliminating blight and revitalizing the area presumably attend most if not all governmental decisions to demolish deteriorating housing projects, the asserted distinction seems unlikely to reflect any difference in fact. (In *Alexander* the purposes were simply undisclosed. The plaintiffs "point[ed] out that the purpose behind HUD's decision to order the tenants to vacate Riverhouse is undisclosed from the record, and that the Secretary has several options: rehabilitation, demolition, or sale of the facility." 555 F. 2d at 170.)

> result of conscious decisions to build a highway here or a housing project or hospital there. In such cases, the acquisition of property and the relocation of certain individuals is a necessary first step in the project. Default acquisitions by the FHA, however, embody no conscious governmental decisions at all. * * * In fact, the default acquisition may be said to represent a failure of the FHA program rather than its desired result.

Resolution of the differences between the court below and the other courts of appeals is important to the administration of the Relocation Act. Under the view adopted by the court below, relocation benefits under the Act would be available, in general, to all tenants who were ordered to move by a federal agency (or by a state or local agency acting with federal financial assistance). Under the view adopted by the other courts of appeals, benefits would be available under the Act only if the tenants were ordered to move in connection with the acquisition or contemplated acquisition of the property, and only if the required connection with "'a program or project undertaken by a Federal agency'" was also present.

The difference between the two interpretations of the Act has considerable practical significance with respect to involuntary federal acquisitions such as the one involving Sky Tower. The Department of Housing and Urban Development has been required, under mortgage insurance contract agreements of the

kind involved here, to take title to a large number of housing developments that have come under default. The Department anticipates that this necessity will continue. Resolution of the question whether the Relocation Act applies to orders to vacate issued by the Department to tenants residing in such involuntarily acquired properties, at any date subsequent to the acquisition, is essential to enable the Department to weigh the human and material costs of demolishing a failing project rather than allowing it to continue deteriorating or devoting further resources to what has been an unsuccessful effort to rehabilitate it. Moreover, since the Relocation Act applies to all federal agencies—and also to state and local agencies acting with federal financial assistance—resolution of the issues presented here is important to all federal agencies—and many state and local ones—that own property on which tenants reside.

2. On the merits, the interpretation of the Relocation Act by the court below was erroneous. The court gave an unduly broad interpretation both to the written order clause and to the phrase "'for a program or project undertaken by a Federal agency.'"

a. While the court based its interpretation on what it considered the "plain terms" of the written order clause (App. A, *infra*, pp. 10A, 11A), we do not find the matter so clear. The written order clause speaks of a "written order of the acquiring agency." The court read "acquiring agency" to include an agency that has acquired the property in question at any time in the past (App. A, *infra*, p. 9A), but it is at least equally plausible from the face of the statute

that the phrase denotes an agency that is engaged in or proposing to engage in an acquisition. If Congress had indeed meant "the written order of the agency that has acquired the property," it could well have said just that.

The apparent ambiguity is resolved by examination of the legislative history. The legislative history discloses that the written order clause was intended to provide a minor supplement to the coverage of the acquisition clause, not to expand the scope of the statute beyond the context of acquisitions of property for affirmative programs or projects.

The initial version of the written order clause appeared in the Senate bill, where a "displaced person" was defined as a person forced to move from property "as a result of the acquisition *or reasonable expectation of acquisition* of [the] property * * * by a Federal or State agency" (emphasis added). S. 1 91st Cong. 1st Sess. 105(1)–(5) (1969) 115 Cong. Rec. 31372 (1969). In the House Public Works Committee, the language was changed to the form ultimately enacted, which requires that the tenant actually be ordered to move by "the acquiring agency" instead of being eligible for benefits simply on the basis of a reasonable expectation that an acquisition would occur. See S. 1 91st Cong., 2d Sess. 1(6) (1970), 116 Cong. Rec. 40163 (1970). As the House Report noted: "If a person moves as a result of such notice to vacate, it makes no difference whether or not the real property actually is acquired." H.R. Rep. No. 1656, 91st Cong., 2d Sess. 4 (1970).

When the bill returned to the Senate, the only reference to the change in the definition of "displaced person" appeared in a memorandum on "points of significant concern" submitted by Senator Percy on behalf of the Administration. 116 Cong. Rec. 42139 (1970). The memorandum read, in relevant part:

> *Definition of displaced person.* The House bill would limit the status of displaced person to those who move as the result of the acquisition of, or written notice to vacate, real property. The Senate version would provide a broader definition which includes those who move as the result of acquisition or reasonable expectation of acquisition.

Consistently with the House Report, this memorandum reflected the understanding that the House bill narrowed the scope of the Senate language. The House version prevailed over the Senate's "broader definition," and the language put forward by the House became the written order clause in Section 101(6) of the Act.

Thus it would appear, as Judge Wilkey concluded in his dissenting opinion below, that the change by the House "limited the definition, and certainly did not vastly expand it by covering all persons displaced with notice from property already owned and acquired by the agency" (App. A, *infra,* p. 41A (emphasis omitted)). As Judge Wilkey also concluded, the House and Senate versions of the written order clause "shared the same purpose," which was "to cover those given notice who moved prior to acquisition or

who moved even though the anticipated acquisition did not occur" (*ibid.* (emphasis omitted)).

Accordingly, the written order clause cannot properly be construed to bring within the coverage of the Relocation Act all tenants who are ordered to vacate premises owned by a federal agency. The written order clause supplements the acquisition clause by dispensing with the need for an actual acquisition so long as there is a written order to vacate. Like the acquisition clause, it is concerned with, and limited to, tenants who are required to vacate property in connection with the acquisition or anticipated acquisition of that property.

b. The court of appeals gave a similarly broad construction to the phrase "'for a program or project undertaken by a Federal agency.'" In the court's view, "the Sky Tower tenants were ordered to vacate their apartments 'for a program or project undertaken by a Federal agency'" because "the demolition of the buildings" was itself such a program or project (App. A, *infra*, p. 10A). At least this is true, the court added, where the demolition is "part of a program to 'eliminate blight'" and revitalize the area (App. A, *infra*, p. 11A and n. 27).

As Judge Wilkey noted in his dissent (App. A, *infra*, pp. 28A–32A), this argument misses the point. To meet the requirements of Section 101(6) of the Relocation Act, it is the *acquisition* of the property that must be for a federal "program or project." Even if the demolition were considered such a program or

project,[5] or even if the demolition anticipates a further program or project, that is not sufficient to trigger the statute unless the agency's acquisition of the property—not simply its order to vacate—was made for that purpose.

This conclusion is indicated by the language of Section 101(6). The court of appeals construed the phrase "'for a program or project undertaken by a Federal agency'" as referring both to the word "acquisition" and to the term "written order." The phrase is more naturally read, however, as referring back singly to the "acquisition," which appears expressly in the acquisition clause and implicitly through "acquiring agency" in the written order clause. The written order clause functions as an appositive to the acquisition clause, not as an independent and separate concept.

The purpose and the legislative history of the Act support this construction. The legislative materials indicate that Congress intended the Relocation Act to provide benefits only to those who were forced to move because of an acquisition of property—or an anticipated acquisition—undertaken to make possible a federal project such as the construction or rehabilitation connected with a public works or urban renewal program. The House Report on the Act, H.R. Rep. No. 1656, *supra,* at 2, stated:

> The need for [relocation benefits] arises from the increasing impact of Federal and federally assisted programs as such programs have evolved to meet the needs of a growing and

[5] In accordance with the holdings in *Alexander* and *Caramico*, we submit that it is not.

> increasingly urban population. In a less complex time, Federal and federally assisted public works projects seldom involved major displacements of people. There was relatively little taking of residential or commercial property for farm-to-market routes or for reservoirs or public buildings. Indeed, local support for such projects often resulted in little, if any, cost for land acquisition or rights-of-way. However, with the growth and development of an economy which is increasingly urban and metropolitan, the demand for public facilities and services has increasingly centered on such urban areas, and the acquisition of land for such projects has become the most difficult facet of many undertakings by public agencies. Also, a major public project—be it a highway, urban renewal project, or hospital—inevitably involves the acquisition and clearance of sites which now provide residential, commercial or other services.[6]

Congress thus intended the Relocation Act to alleviate some of the harshness of the displacements required by the acquisition of property for federal projects, in part by providing compensation for interests not compensable under the law of eminent domain. See H.R. Rep. No. 1656, *supra,* at 1, 2. Con-

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[6] The context of the Relocation Act also indicates that the Act was intended to apply to acquisitions for federal programs or projects, not to involuntary acquisitions of defaulted properties. Title III of the Relocation Act, 42 U.S.C. 4651–4655, sets out policies governing "real property acquisition" under the Act. The only methods of acquisition considered in that Title are negotiation and condemnation.

gress also intended to compel the agency considering the projects to include the payments required by the Act among the costs of the project, to be weighed against its benefits and paid out of the project proceeds. Congress did not intend to escalate the cost of governmental actions consequent upon financial default, nor did it intend to handicap a public agency seeking to minimize its losses in these circumstances. As the Second Circuit pointed out in *Caramico* (509 F. 2d at 698–699), "the Act contemplates normal government acquisitions, which are the result of conscious decisions to build a highway here or a housing project or hospital there. * * *" The Act thus has no application where the order to move is not made in connection with an acquisition of property for a federal program or project.

3. The interpretation adopted by the court of appeals would invite anomalous results. The agency acquiring the property after a default could avoid any obligation to pay relocation benefits by insisting that the mortgagee deliver the property unoccupied, as was done in the *Caramico* case (see 509 F. 2d at 696). Inducing agencies to take this step in order to avoid the obligations of the Relocation Act would serve no discernible policy interest and might well result in greater hardship to the affected tenants.[7]

[7] Also, the basis on which the court of appeals attempted to distinguish the *Alexander* case, see note 4, *supra*, would invite the agency to order the tenants to vacate at the earliest possible time after acquiring the property, before the agency had settled on any particular plan for disposing of the property after demolition.

In addition, the reading given the statute by the court of appeals could have the curious result of forcing the Department of Housing and Urban Development to make replacement housing payments (totaling as much as $15,000) to homeowners who default on their own federally insured mortgages. 42 U.S.C. 4632. The Department could also be faced with claims for statutory relocation benefits by absentee landlords who default on mortgage payments and whose "business" is "displaced" as a result of foreclosure. 42 U.S.C. 4622.

To be sure, courts faced with such claims might find ways to avoid extending the decision in this case to those situations. These examples and others that might be posed illustrate, however, the uncabined reach of the decision below and the inconsistency of that decision with the intended scope of the Relocation Act.

4. The Department of Housing and Urban Development is not insensitive to the hardships that often accompany being forced to move from a federally owned housing development. The Department is now examining measures to provide some level of benefits to persons who are required to move from a Department-owned project but who do not qualify for benefits under the Department's interpretation of the Relocation Act. The level of assistance contemplated would be designed to enable each individual to find a decent,

safe, sanitary, and affordable unit in which to relocate, as well as providing reimbursement for reasonable moving expenses. It would not, however, include the substantial money payments required by the Relocation Act.

The Department is currently considering whether it can provide such assistance by regulation under existing program statutes or whether it must seek new legislation and authorization for funding. The Department is also considering the appropriate eligibility criteria and levels of assistance.

Because of the uncertainty generated by the conflict among the circuits, and because the decision below has a substantial financial impact on the Department of Housing and Urban Development (and other federal, state, and local agencies) and deprives the Department of the flexibility it needs to devise a new program of appropriate relocation benefits for qualifying tenants, reviewed by this Court is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.
JAMES W. MOORMAN,
Assistant Attorney General.
JACQUES B. GELIN,
CHARLES E. BIBLOWIT,
Attorneys.

APRIL 1978.

APPENDIX A

United States Court of Appeals for the
District of Columbia Circuit

(No. 75-2268)

SADIE E. COLE, ET AL.

v.

PATRICIA ROBERTS HARRIS, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., APPELLANTS

(No. 75-2269)

SADIE E. COLE, ET AL., APPELLANTS

v.

PATRICIA ROBERTS HARRIS, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

Appeals from the United States District Court
for the District of Columbia

(D.C. Civil 74-1872)

Argued January 11, 1977; Decided November 14, 1977

Charles E. Biblowit, Attorney, Department of Justice with whom *Peter R. Taft,* Assistant Attorney General, *Earl J. Silbert,* United States Attorney,

Nathan Dodell, Assistant United States Attorney and *Jacques B. Gelin,* Attorney, Department of Justice were on the brief for appellants in No. 75–2268 and appellees in No. 75–2269. *Robert N. Ford, John A. Terry* and *Robert M. Werdig, Jr.,* Assistant United States Attorneys also entered appearances for appellants in No. 75–2268 and appellees in No. 75–2269.

Florence Wagman Roisman, with whom *Lynn Edward Cunningham* was on the brief, for appellants in No. 75–2269 and appellees in No. 75–2268. *Ann K. Macrory* also entered an appearance for appellants in No. 75–2269 and appellees in No. 75–2268.

Before: BAZELON, *Chief Judge* MCGOWAN, and WILKEY, *Circuit Judges.*

Opinion for the Court filed by *Chief Judge* BAZELON.

Dissenting opinion filed by *Circuit Judge* WILKEY.

BAZELON, *Chief Judge:* The central issue on appeal is whether appellees, former tenants of the Sky Tower apartments in Southeast Washington, D.C., qualify for relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.[1] A subsidiary issue is whether, if they qualify, they should receive the full benefits of the Act or only some prorated portion of them. We hold that they qualify for full benefits under the statute.

I. STATEMENT OF THE CASE

Sky Tower was built in the 1950s under a program which provided Federal Housing Administration (FHA) insurance for veterans. It consisted of 19 buildings of garden-type apartments containing 217

[1] 42 U.S.C. § 4601 *et seq.* (1970) (hereinafter referred to as the Uniform Relocation Act).

one- and two-bedroom units. In 1970, a non-profit corporation purchased Sky Tower and secured a mortgage insured by the Department of Housing and Urban Development (HUD) under Section 236 of the National Housing Act.[2] The corporation undertook to rehabilitate Sky Tower and transform it into a 150-unit complex of larger apartments to serve low and moderate income families. HUD subsidized the interest rate on the mortgage[3] and undertook to pay rent supplements for up to 60 households. In addition, 20 units were to be leased to the National Capital Housing Authority which would re-lease them at public housing rents to eligible households.[4]

By November, 1972, the original and a second general contractor had both defaulted in their performance of the rehabilitation work. The mortagee then foreclosed on the mortgage and conveyed title to the project to HUD in exchange for mortgage insurance benefits as authorized by statute.[5] At that time, 8 buildings had been completely rehabilitated, 3 were approximately half rehabilitated, and work had not yet begun on 8 others.

HUD took title to Sky Tower on June 15, 1973, and hired a management firm to operate the project. New month-to-month leases were executed with the tenants under the same terms as formerly. But by September, 1974 the agency had concluded that further rehabilitation was futile; it decided to demolish Sky Tower and sell the vacant land to developers for the construction of single family homes for middle-income families. On September 27, 1974, HUD's property manager sent no-

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[2] 12 U.S.C. § 1715z–1 (1970).

[3] Pursuant to § 236, 12 U.S.C. § 1715z–1 (1970).

[4] Pursuant to 42 U.S.C. § 1401 *et seq.* (1970).

[5] 12 U.S.C. §§ 1713(g) and (k) (1970).

tices to the 72 families then residing at Sky Tower informing them of HUD's decision and giving them 30 days notice to vacate the premises.[6] Nine of Sky Tower's 19 buildings were demolished in December, 1974, and January, 1975. Departing tenants who were not in arrears in their rent were given $300 for moving expenses and exempted from paying their last month's rent. HUD also claims to have assisted them in finding suitable new homes, but that is vigorously disputed by the tenants.[7]

On December 23, 1974, appellees brought suit on behalf of the tenants who had left Sky Towers pursuant to the eviction notices and the few tenants who remained there. They challenged HUD's decision to raze rather than rehabilitate the complex on several grounds and they sought declaratory and injunctive relief, as well as damages. One of their claims was that HUD had failed to comply with the Uniform Relocation Act.

On January 28, 1975, the District Court issued a temporary restraining order against any further demolition. On February 7, the TRO was expanded into a preliminary injunction. Severely castigating HUD for reaching an irrational decision and failing "to weigh the human values it was created by Congress to protect,"[8] the trial judge enjoined any further demolition or evictions and ordered HUD to (1) clean up the rubble around the site; (2) restore the undemolished buildings to a condition at least as decent, safe, and sanitary as that existing as of September 17, 1974; (3) permit all former tenants who had left Sky Tower subsequent to September 17, 1974, to return to

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[6] The deadline was later extended to January 31, 1975.

[7] *See, e.g.*, JA 19, 21, 24, 26, 27, 32, 34, 37, 40, 64.

[8] Cole v. Lynn, 389 F. Supp. 99, 105 (D.D.C. 1975).

the restored buildings at HUD's expense; and (4) provide security services adequate to prevent vandalism.[9] The trial judge noted that these affirmative directives were necessary because "[o]nly by filling the buildings with qualified needy tenants can the project remain viable pending final determination;" otherwise "vandalism, empty apartments and continuing unsafe conditions would, as a practical matter, effectively accomplish demolition by a process of erosion."[10]

HUD appealed from the portions of the preliminary injunction requiring it to restore the buildings and arrange for the return of the tenants. But both the District Court and this Court refused to stay the order pending appeal, and, after HUD had complied with its terms, the appeal was dismissed as moot.[11]

But compliance was slow in coming. The trial judge repeatedly noted HUD's "continuing defiance" of the order and took numerous steps to compel obedience, including finally an order to show cause why the government should not be held in contempt.[12] Six months passed before any tenant was returned to Sky Tower.

As of February, 1975, 17 households were still living at Sky Tower and 55 households had moved out. Most of those who had been displaced had relocated in units that were more expensive, smaller, or otherwise less desirable than the units they had left at Sky Tower. When HUD determined to evict the tenants from Sky Tower, it thrust them into a housing market that could not accommodate them. Instead, it was the acute shortage of housing in the District of Co-

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[9] *Id.* at 106.

[10] *Id.* at 105.

[11] Cole v. Lynn, No. 75-1543 (D.C. Cir., dismissed Sept. 29, 1975).

[12] JA 79. *See also* Cole v. Hills, 396 F. Supp. 1235 (D.D.C. 1975).

lumbia for low-income persons with large families—the very class Sky Tower served—that made the decision to demolish so shocking to the trial judge.

The record shows that tenants experienced considerable difficulty in securing replacement housing.[13] One tenant's rent increased from $84 to $189.50—out of a total income of $243 per month for herself and two children. Another had to spend $185 for rent out of a total monthly income of $207—compared to $98 for rent at Sky Tower.[14]

The practical effect of the preliminary injunction on these tenants was notification in July, 1975, that they could return to Sky Tower. HUD would pay their moving expenses and any expenses incurred in breaking their new leases. But the letter also stated:

> The future of Sky Tower Apartments is not yet known. As a result of the Court case, HUD is taking a new look at the question of demolition of Sky Tower. If HUD should still decide to demolish, that decision would be reviewed by the Court. While it is possible that Sky Tower will ultimately be demolished, it is also possible that it will not. In the meantime, the Court's order requiring HUD to rehabilitate the units and move tenants back into the restored units will remain in effect.[15]

Faced with this uncertainty and the very real possibility of being uprooted yet again, only 18 families decided to return to Sky Tower.

On September 12, 1975, the District Court granted partial summary judgment for the tenants, holding that the tenants who had vacated Sky Tower were

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[13] *See* note 7 *supra*.

[14] JA 64 and 29.

[15] Joint letter sent to all former tenants of Sky Tower, July 16, 1975

entitled to benefits under the Uniform Relocation Act. Specifically, the court entered a declaratory order that any person who was a tenant of Sky Tower on September 27, 1974, and who had vacated his or her apartment as a result of HUD's notice, was entitled to a prorated portion of the benefits provided under Section 204 of the Act[16] for the period between the date that tenant left Sky Tower and the date the tenants were permitted to return pursuant to the court's preliminary injunction (*i.e.*, August 1, 1975). The government took this appeal from the holding that the Uniform Relocation Act applies. The tenants cross-appeal from the termination of benefits on August 1.[17]

II. Applicability of the Uniform Relocation Act

The Uniform Relocation Act was passed in 1970 to establish a uniform policy for the fair and equitable treatment of all persons displaced as a result of any federal or federally assisted program.[18] It replaced a patchwork of piecemeal relocation statutes. For displaced tenants, it provides the following benefits: (1) actual reasonable moving expenses, or a moving expense allowance of up to $300 and a dislocation allowance of $200,[19] and (2) a payment of the amount

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[16] 42 U.S.C. § 4624 (1970).

[17] Subsequently, the District Court, with the consent of the parties, remanded the question of the disposition of Sky Tower to HUD for reconsideration in light of the concerns expressed in the court's opinion on the preliminary injunction. On December 17, 1976, HUD reported to the court that it had decided not to demolish the buildings but rather to transfer them to the District of Columbia, with HUD continuing to contribute substantial rent subsidies.

[18] 42 U.S.C. § 4621 (1970).

[19] 42 U.S.C. § 4622(a)(1) and 4622(b) (1970).

necessary to rent a comparable decent, safe, and sanitary dwelling for up to four years, but not to exceed $4,000.[20] Most importantly, the Act provides that:

> No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625 (c)(3) of this title, is available to such person.[21]

Section 4625(c)(3) specifies that such replacement housing must be "in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, * * * and reasonably accessible to their places of employment. * * *"

To qualify for benefits under the Act, a tenant must come within the statutory definition of "displaced person." Reduced to its essential language, that definition reads:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property, * * * or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency * * *.[22]

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[20] 42 U.S.C. § 4624(1) (1970). The payment is equal to the difference between the displaced person's former rent and the rent for a comparable replacement dwelling. 24 C.F.R. § 42.95(c) (1977). The Act also offers, as an alternative not relevant here, up to $4000 towards a downpayment on the purchase of a dwelling. 42 U.S.C. § 4624(2) (1970).

[21] 42 U.S.C. § 4626(b) (1970).

[22] 42 U.S.C. § 4601(6) (1970). Section 4601(6) reads in full: "The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal

The section sets out two alternative grounds of eligibility: having moved as a result of the acquisition of property for a federal program or project (the acquisition clause); *or* having moved as a result of a written order of the acquiring agency to vacate the property for a federal program or project (the notice clause). The District Court ruled that appellees clearly fell within the second or notice definition:

> [B]y having come into possession of the Sky Tower Apartment project as the result of a mortgage default, HUD was "the acquiring agency" within the meaning of the Act;
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> * * * the notices of September 27, 1974 advising Sky Tower tenants to vacate were the "written order of the acquiring agency to vacate real property" within the meaning of the Act; and
>
> * * * the notices aforesaid were "for a program or project undertaken by a federal agency" within the meaning of the Act, to wit, the demolition of Sky Tower. * * *[23]

We agree that appellees qualify as "displaced persons" under the notice alternative. It is undisputed that HUD is an "agency," and that HUD "acquired" Sky Tower within the common meaning of that word. It is undisputed that HUD, having acquired Sky Tower, served upon each tenant a written order to

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property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622 (a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project."

[23] JA 89.

vacate.[24] And it is undisputed that some 55 households moved from Sky Tower "as the result of" HUD's written order.

Moreover, it is clear that the Sky Tower tenants were ordered to vacate their apartments "for a program or project undertaken by a Federal agency," namely, the demolition of the buildings. Although there is some suggestion in the government's brief that a "program or project" means only "a federal construction or rehabilitation project, such as public works or urban renewal," [25] there is no warrant in the statute for this limiting interpretation. Obviously, construction and rehabilitation projects will frequently be preceded by demolition. If the government means that demolition is a "project" within the Act when the agency constructs a building in its place but not when the agency simply tears down without building up, the anomaly is obvious. HUD's mandate is to increase the stock of decent, sanitary housing for low-income families—not to destroy existing housing. Congress clearly did not intend that tenants displaced by a simple decision to wreck their homes would receive less protection than tenants displaced by a constructive urban renewal project.

In sum, appellees qualify as "displaced persons" within the plain terms of the notice clause. This common sense interpretation is reinforced by consideration of the policies of the Relocation Act. A basic purpose of the Act is to ensure that displaced persons do not "suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole." [26] Equally important, by providing reloca-

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[24] Letter sent to all tenants of Sky Tower, Sept. 27, 1974.

[25] Government brief at 15.

[26] 42 U.S.C. § 4621 (1970).

tion benefits for persons displaced by programs or projects for the general welfare, the Act ensures that federal officials take the costs of relocation into account *before* embarking on such programs.

Clearly, the Sky Tower tenants were displaced for a federal project "designed for the benefit of the public as a whole." In proceedings before the district court, HUD admitted that the demolition of Sky Tower was part of a program to "eliminate blight." It stated that Sky Tower had become "blighted, vandalized, unattractive and unsafe" and that the area needed to be "revitalized" by the construction of single-family dwellings in accordance with the District of Columbia government's master plan.[27] Thus, unless relocation benefits are paid to the former Sky Tower residents, they will be forced to bear a disproportionate share of the costs of a project for the benefit of the general public, and federal officials will be able to ignore relocation costs in considering whether to proceed with the project.

Although the Sky Tower tenants appear to qualify for benefits under the plain terms of the notice definition, the government nevertheless maintains that this definition is subject to a restriction not apparent from

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[27] Government memorandum, *quoted* 396 F. Supp. at 1236. This purpose distinguishes the instant case from Alexander v. U.S. Dept. of Housing and Urban Development, 555 F. 2d 166 (7th Cir. 1977). There the decision to terminate, but not demolish, a housing project was held not to be a federal program or project. HUD had made no plans for the future of the buildings. The court said, "We fail to see how a decision to terminate a project can itself become a project *in the absence of some indication that the decision to terminate and the order to vacate constitute a prelude to some governmental undertaking amounting to a program designed for the benefit of the public as a whole.*" *Id.* at 170. (emphasis added)

the face of the statute. Specifically, it contends that the tenants do not qualify as "displaced persons" because, at the time Sky Tower was *acquired*, HUD had not determined to use it for a federal program or project. We find the arguments advanced in support of this implied restriction unpersuasive.

First, the government argues that this restriction is required by *Caramico* v. *Secretary of Dept. of Housing and Urban Development*, 509 F. 2d 694 (2d Cir. 1974), which held that "random and involuntary" acquisitions of property due to default and foreclosure are not *acquisitions* for a federal program or project.[28] As the government concedes, *Caramico* was concerned solely with the acquisition definition, rather than the one upon which the Sky Tower tenants rely, the notice definition.[29] But it finds significance in the phrase "acquiring agency" contained in the notice definition. Invoking the principle that the same word used in different parts of a statute is presumed to have the same meaning each time it is used,[30] it argues that "acquiring agency" should be interpreted to mean an agency making an "acquisition" as that term was

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[28] Because we conclude that appellees qualify as "displaced persons" under the notice clause, we need not reach the difficult question whether they also qualify under the acquisition clause. Thus, although we agree with *Caramico* that the acquisition clause requires an acquisition *for* a federal program or project, 509 F. 2d at 697, we express no opinion as to whether HUD's *acquisition* of Sky Tower, or any similar acquisition, can be so described.

[29] Harris v. Lynn, 411 F. Supp. 692 (E.D. Mo. 1976), *aff'd*, 555 F. 2d 1357, 1359 (8th Cir. 1977), relied upon by the dissent, also appears only to construe the acquisition clause of the Relocation Act. To the extent that that case can be interpreted as requiring an acquisition for a federal program or project under the *notice clause*, we disagree.

[30] *Citing* Helvering v. Stockholms Enskilda Bank, 293 U.S. 84, 87 (1934).

construed by *Caramico*. In other words, that the notice definition, like the acquisition definition, should not apply where property is *acquired* due to default and foreclosure and only later is committed to use in a federal program or project.

We find little merit in this argument. Aside from the fact that "acquiring agency" is *not* the same word as "acquisition"—the former is an entity whereas the latter is an event—the government's argument proves too much. If an "acquisition" as that term is used in the acquisition clause is also required under the notice clause, then the notice alternative would be rendered surplusage.

More fundamentally, the government's argument fails to probe beyond the holding of *Caramico* to the rationale of that decision. Because the Relocation Act "contemplates a conscious government decision to dislocate some so that an entire area may benefit," 509 F. 2d 698, *Caramico* requires that an "acquisition" for purposes of the acquisition clause must be *for* a federal program or project. By parity of reasoning, the Act requires that an "order to vacate" in terms of the notice clause must be *for* a federal program or project, a requirement satisfied in this case. The government's argument that the notice clause requires, *in addition*, that an agency *acquire* property for a government program or project, would artificially restrict the coverage of the Act in a way inconsistent with the policies recognized by *Caramico*.

The government's second argument, vigorously pursued by the dissent, is that the legislative history of the Relocation Act indicates the notice definition was intended to apply when an agency issues an order to vacate *before* real property is acquired. Of course, resort may be had to legislative history when a statute is ambiguous, or where the ordinary meaning would

lead to absurd or futile results.[31] But "the plainer the language, the more convincing contrary legislative history must be." *United States* v. *United States Steel Corp.*, 482 F. 2d 439, 444 (7th Cir.), *cert. denied*, 414 U.S. 909 (1973). Since the notice clause is clear on its face, and its common sense meaning is consonant with the purposes of the Act, we would accept the government's interpretation of the clause only if supported by clear and convincing evidence from the legislative history.

In fact, there is very little legislative history expressly concerned with the meaning of the notice clause, and the history that exists is, at best, inconclusive.[32] The meager state of the legislative history

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[31] *See, e.g.*, United States v. Public Utilities Comm., 345 U.S. 295, 315 (1953); United States v. Missouri Pac. R. Co., 278 U.S. 269, 278 (1929).

[32] The dissent emphasizes the fact that the original Senate bill defined a "displaced person" as one who moves "as a result of the acquisition or reasonable expectation of acquisition." 115 Cong. Rec. 31372 (1969). The dissent concludes that in adopting the House bill, which deleted the reference to "reasonable expectation of acquisition," and added the notice clause, Congress intended only "to provide a more concrete standard than 'reasonable expectation' of acquisition." Dis. op. at 21. However, there is little evidence in the legislative history that sheds light on Congress' intent in enacting the House version, and what evidence exists is ambiguous.

The House Report contains only one sentence directly applicable to the notice clause. This says: "If a person moves as the result of such notice to vacate, it makes no difference whether or not the real property actually is acquired." H.R. Rep. No. 1656, 91st Cong., 2d Sess. (1970), *reprinted in* [1970] U.S. Code Cong. & Ad. News 5850, 5853. This implies that *one* circumstance in which the notice clause applies is when an agency orders someone to vacate property before the agency acquires it. But the Report does not say that this is the *only* situation in which the notice clause applies. In fact, the conditional language of the quoted sentence implies just the opposite.

suggests that in considering the definition of "displaced person" Congress' attention was focused on the class of persons displaced by acquisitions or antici-

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The dissent also relies on a statement in an executive branch memorandum stating that the Senate version was "broader" than the House version. Dis. op. at 20, quoting 116 Cong. Rec. 42139 (1970). This too is inconclusive. The "reasonable expectation of acquisition" language in the Senate bill would indeed cover some situations not covered by the notice definition, i.e. where the government has not acquired property and has not sent notice but there is a reasonable expectation of acquisition. But it does not necessarily follow that Congress, as opposed to the executive, intended the notice definition to be narrower than the Senate definition *in all respects*.

We are equally unpersuaded by the dissent's citation to other sections of the Relocation Act referring to persons displaced because of "acquisitions." Dis. op. at 22. This shorthand cross-reference is obviously more convenient than repeating the entire definition. The explanation for the particular choice of words most consistent with the purpose of the Act is that Congress assumed displacements would occur more frequently from acquisitions than from notices to vacate government property.

Similarly misguided is the dissent's reliance on § 217 of the Act, 42 U.S.C. § 4637 (1970). The dissent concludes that there would have been no need to enact § 217 if Congress had intended the notice clause to have its common sense meaning, since persons displaced under the programs referred to in this section "would undoubtedly have been given notices to vacate 'for' these projects and would have been qualified under the notice clause. * * *" Dis. op. at 27. The basis for this assertion is not apparent. In fact, written notice is not required by either program referred to in § 217. See 42 U.S.C. § 1455(c)(1) (1970) (title I of the Housing Act of 1949); 42 U.S.C. 3307 (1970) (title I of the Demonstration Cities and Metropolitan Development Act of 1966). Congress could quite reasonably conclude that even under the notice definition it was uncertain that persons displaced by these programs would be eligible for benefits. The explanation for § 217 most congruent with the legislative purpose is that it was enacted "out of uncertainty, understandable caution, and a desire to avoid litigation." National Petroleum Refiners Ass'n v. FTC, 482 F. 2d 672, 696 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974).

pated acquisitions of property, rather than the class of persons already living on government property and displaced by a federal program or project. But congressional inattention does not constitute the kind of convincing demonstration of contrary legislative intent required to overcome the plain language of the statute. In fact, considering the purposes of the Relocation Act, we are convinced that if Congress had explicitly considered the problem of persons ordered to vacate government property for a program or project, it would have approved an interpretation of the Act making benefits available for such persons.

The government's final argument is that the plain terms of the Uniform Relocation Act cannot be heeded because to do so would impose a financial burden on HUD. The essential point, however, is that any financial burden results not from our construction of the Act but rather from HUD's own decision to displace people in order to demolish their homes. HUD appears to suggest that if the costs of relocation are too heavy for government funds, the displaced tenants should bear them. But the mandate of the Act is precisely contrary: if the costs are too much for HUD, then the demolition should not take place.[33]

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[33] "It is no longer proper to require the displaced person, rather than the displacing project, to bear the cost of relocation. If this cost becomes prohibitive and necessitates some re-thinking about a particular project, then so be it, just as if the cost of land or labor and materials were prohibitive." Abramowitz, *Uniform Relocation Act Defended*, 29 JOURNAL OF HOUSING 279, 281 (1972).

It should be noted that, in a situation like the instant one, where there is a shortage of suitable replacement housing, *see* 42 U.S.C. §§ 4626(b) and 4625(c)(3) (1970), the costs of relocation to be borne by HUD might include the expense of constructing replacement housing. Section 4626(a) provides: "If a federal project cannot proceed to actual construction because comparable replace-

III. Amount of Benefits Available

The District Court ruled that all persons who were tenants of Sky Tower on September 27, 1974, and who vacated their apartments as a result of HUD's notice, were entitled to a prorated portion of the benefits provided under Section 204 of the Act [34] for the period between the date of their move and August 1, 1975 (or the date on which any such person actually returned to Sky Tower, if earlier than August 1, 1975). August 1 was selected as the cut-off date because by that date all former tenants had been given the opportunity to return to Sky Tower pursuant to the preliminary injunction. As we understand the District Court's order, the Act's moving expenses benefit and its requirement that replacement housing be available are *fully* applicable to appellees; however, under the order appellees are entitled to only a *prorated* portion of the Act's rent benefits. As noted *supra*,[35] under the terms of the Act these latter benefits may amount to a maximum of $4000 over a four-year period. Under the District Court's formula, however, these benefits would be limited to approximately $750 per tenant.

We believe the trial judge was correct to prorate the benefits to those tenants who actually returned to Sky Tower in the summer of 1975. Their return to their original homes made the provision of money

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ment sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project."

[34] 42 U.S.C. § 4624 (1970).

[35] See n. 19 *supra* and accompanying text.

towards rent for comparable *replacement* housing unnecessary. Indeed such payments could not have been reconciled with the statute.[36]

We cannot agree, however, that benefits to those tenants who did not choose to return to Sky Towers should terminate on the date they were given leave to return. We can understand the trial judge's disappointment that only 18 of the 55 displaced families chose to return. He felt that the remainder had "walked away from what they brought suit for, and now they want money," not housing.[37] But while this reaction is understandable, it overlooks a critical fact—the court's issuance of a *preliminary* injunction did *not* grant to appellees the right to return to the quiet enjoyment of their homes; rather, it gave them only the limited right to return *pendente lite* to a half demolished and decimated community which might

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[36] 42 U.S.C. § 4624 (1970).

[37] The following colloquy took place:

"The Court. No, I am not talking about the returning tenants. I am talking about the majority of your class that doesn't want to come back—that is the group I am talking about. The great bulk of these people listed in the report don't want to have anything to do with Skytower. They walked away from what they brought suit for, and now they want money, and that is where we are at.

"Mrs. Roisman. Well——

"The Court. And I want to know how that is going to be handled.

"Mrs. Roisman. Well, to be fair, Your Honor, I do want to say that it is not that they have walked away——

"The Court. They certainly have. They certainly have, and it has been a great disappointment after the extraordinary effort the Court made on representations as to their need—they all walked away from it.

"Now I don't want to argue that, but they did." JA 99.

still have been demolished in the near future.[38] A decision to return would mean giving up new homes found only after arduous search, undergoing the disruption of a second move some nine months after the first, and assuming the very substantial risk of being uprooted yet again should the demolition decision be upheld.

The affidavits in the record amply demonstrate that the tenants were motivated by these concerns, not a desire to "walk away" from the lawsuit.[39] Faced with the uncertainty of the situation, it was not unreasonable for some of the families to decline to return. We hold that the offer to return *pendente lite* pursuant to the *preliminary* injunction did not cut off the rights of relocation payments of those tenants who did not return.[40]

Accordingly the decision below is *affirmed in part and reversed in part.*

WILKEY, *Circuit Judge, dissenting:* To read the confident language of Chief Judge Bazelon's opinion one would never guess that three circuits, three districts, twelve federal judges—every federal judge considering the issue before this case—had ruled contrary to the result reached by my colleagues here. They say

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[38] This message was made explicit in the letter, approved by counsel for both sides, sent to all former tenants pursuant to the preliminary injunction. *See* text at note 14 *supra.*

[39] JA 49, 72, 84.

[40] HUD's own Handbook on providing replacement housing states: "In no case shall referral be made to a unit from which it can reasonably be anticipated that the family or individual may subsequently be displaced." HUD Relocation Handbook 1371.1 REV. at 2–15 (Feb., 1975). The offer to return to Sky Tower did not satisfy this requirement.

that "appellees qualify as 'displaced persons' within the plain terms of the notice clause" and that this "common sense interpretation is reinforced by consideration of the policies of the Relocation Act."[1] The Seventh Circuit in *Alexander* v. *HUD*[2] held squarely the reverse; *Alexander* involved the notice clause, not the acquisition clause, and cannot fairly be distinguished from our case here. The Eighth Circuit in *Harris* v. *Lynn*[3] dealt with persons displaced from property already owned by the federal agency, our situation here, and held that the tenants were not "displaced persons" under the Act, even though they may have moved pursuant to a notice to vacate, because absence of a federal "acquisition" was the key. The Second Circuit in *Caramico* v. *HUD*[4] likewise held contrary in both rationale and result to the decision of my colleagues here, who attempt to distinguish *Caramico* on the ground that it involved the acquisition clause, not the notice clause. That same distinction was argued in *Alexander* and rejected by the Seventh Circuit, which pointed out that the rationale of *Caramico* applies with equal validity whether the acquisition or the notice clause is involved.

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[1] Maj. op. at 10. And cf.: "Of course, resort may be had to legislate history when a statute is ambiguous, or where the ordinary meaning would lead to absurd or futile results. But 'the plainer the language, the more convincing contrary legislative history must be.' * * * Since the notice clause is clear on its face, and its common sense meaning is consonant with the purposes of the Act, we would accept the government's intepretation of the clause only if supported by clear and convincing evidence from the legislative history." *Id.* at 14 (footnote and citation omitted).

[2] 555 F. 2d 166 (7th Cir. 1977), *rehearing denied*, 19 September 1977.

[3] 555 F. 2d 1357 8th Cir. 1977), *affirming* 411 F. Supp. 692 (E.D. Mo. 1976).

[4] 509 F. 2d 694 (2d Cir. 1974).

These persuasive precedents will be discussed in detail at the proper place later in this dissent. I mention them at the outset to make the reader of Judge Bazelon's well-written opinion aware that it rests, not on firm logic and precedent, but on no precedent and on a rationale which has been argued and universally repudiated elsewhere. Now to the facts of this case, and the proper application of the statute and the precedents thereto.

To be entitled to benefits as a "displaced person" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act [5] a person must be required to move as a *result of the acquisition of property for a program or project* undertaken by a federal agency or with federal financial assistance. Or, alternatively, a "displaced person" may be someone required to move as a *result of a written notice by the acquiring agency to vacate real property for a program or project* undertaken by a federal agency or with federal financial assistance. In this case, the Department of Housing and Urban Development (HUD) acquired title to the Sky Tower buildings due to the default and foreclosure of the mortgage it had insured. About fifteen months later, HUD delivered written orders to the tenants to vacate, so that Sky Tower could be demolished and the land sold to developers.

HUD's position is that the tenants at Sky Tower are not "displaced persons" within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (the Uniform Relocation Act or the Act). Relying heavily upon the decisions of the Seventh Circuit in *Alexander* v. *HUD*,[6] the Eighth

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[5] 42 U.S.C. § 4601(6) (1970).

[6] Note 2 *supra*.

Circuit in *Harris* v. *Lynn*,[7] and the Second Circuit in *Caramico* v. *HUD*,[8] HUD argues that the definition of a "program or project undertaken by a Federal agency" must be limited to "consciously and voluntarily undertaken public works projects." HUD contends that in this case the acquisition due to a default and foreclosure of an insured mortgage was random and involuntary and, therefore, should not be covered by the Uniform Relocation Act. Also, the acquisition was not for any "program or project" which HUD had in mind.

Accepting neither the soundness of the *Caramico* definition of "program or project," accepted by the Seventh and Eighth Circuits, nor the HUD characterization of the acquisition here as involuntary, the majority holds that appellees here, the Sky Tower tenants, are "displaced persons." The majority tries to avoid taking issue directly with the holding of *Caramico*, however, and rests its decision upon the grounds adopted by the District Court, that the tenants were required to move by the HUD notices to vacate for a federal project, namely the demolition of Sky Tower. I cannot join in this conclusion. (As I shall explain in more detail later, the "notice" category of "displaced persons" was designed by Congress to include persons *who move prior to acquisition* upon receiving notice from the acquiring agency of its intention to acquire the property. Even if the agency does not acquire the property for some reason, these persons would be assured of benefits under the Uniform Relocation Act. The "notice" alternative was *not* meant to apply to a situation such as

[7] Note 3 *supra*.

[8] Note 4 *supra*.

this where HUD had already acquired Sky Tower and a year later gave notices to vacate.)

As will be seen in the analysis which follows, the critical inquiry must consider the first clause of the "displaced person" definition, namely, whether the initial "acquisition" of Sky Tower was for "a program or project undertaken by a Federal agency," as well as the second ("notice") clause of the definition, for both clauses contemplate a *voluntary* acquisition, and both an *actual* acquisition and a notice of a *proposed* acquisition must be "for a program or project" and anticipated resulting displacement. As will be seen below, the acquisition here, by default and foreclosure of an insured mortgage ,should be considered involuntary. Further, as *Caramico* properly establishes, acquisitions by such involuntary and random means are not for a federal "program or project" within the meaning of the Uniform Relocation Act.

In short, falling into neither clause of the definition, appellees here are not "displaced persons." This result rests, I believe, upon a reading of the statutory definition which is faithful to Congressional intent, consistent with the text of the definition and the structure of the statute, and supported by case law. Whether this result, which disqualifies appellees from the benefits of the Uniform Relocation Act, is justified by reasons of policy or equity remains a question for Congress, and not for the courts, as is made clear in Part IV below.

I. Involuntary Acquisition—The Fact Here

As the majority explains in more detail,[9] Sky Tower was purchased in 1970 by a nonprofit corporation by

[9] Maj. op. at 3.

means of a mortgage insured by HUD. Following abandonments by the contractors and default by the nonprofit corporation, the mortgagee elected to foreclose on the mortgage and transfer title to HUD in return for the mortgage insurance benefits. In the language of *Caramico,*[10] this acquisition was "involuntary and in response to the default." Such "random acquisitions * * * of defaulted property," *Caramico* continued, "are not acquisitions 'for a program or project undertaken by a Federal agency' within the contemplation of the drafters of the Relocation Act."

While the majority avoids responding to *Caramico* directly,[11] the question of whether HUD's act here was an acquisition "*for* a [federal] program or project," *i.e.*, a voluntary acquisition, must ultimately be faced under the notice clause discussed later. Hence it is helpful to look at what the District Court said relevant to this point:

> Rehabilitation work began at Sky Tower in May of 1971. By November, 1972, two contractors had defaulted in their performance of the rehabilitation work. At that time, eight buildings had been completely rehabilitated, three were approximately 50 percent rehabilitated, and work had not yet begun on eight others. Although the non-profit sponsor wished to complete the rehabilitation work, and the mortgagee was prepared to allow that, HUD insisted that the property be foreclosed. *See* 24 C.F.R. § 236.56. Title was transferred to HUD on June 15, 1973.[12]

Note that the District Court only says that HUD "insisted" upon foreclosure. The obvious question is *why* HUD "insisted." Could it have been that HUD

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[10] 509 F. 2d at 699 (footnote omitted).

[11] *See* Maj. op. at 12 n. 28.

[12] *Cole* v. *Lynn*, 389 F. Supp. 99, 101 (D.D.C. 1975).

had no option but to insist upon foreclosure, thus making its action involuntary? The answer is yes, and the clue is the citation.

That citation provides the explanation for HUD's "insistence." 24 C.F.R. § 236.56, "Determination of project feasibility—fair market rentals," as set out in full below, establishes the rule in its paragraph (a) that HUD *shall not* make commitments for mortgage insurance for projects where the rents will exceed the rents for similar housing.[13] Paragraph (b) of the rule, as noted below, sets out the two *necessary* conditions for any exceptions to the limit. With its bare citation to § 236.56, the District Court's opinion does not explain HUD's "insistence," but, as the rule

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[13] § 236.56 Determination of project feasibility—fair market rentals.

(a) In the determination of project feasibility prior to issuing a commitment for mortgage insurance under this part, the fair market rentals estimated in accordance with § 236.56(a)(2) shall be at a level that can be expected to attract nonsubsidized tenants, who will pay fair market rentals, and shall not exceed the rentals obtainable for reasonably comparable nonsubsidized rental dwelling units similarly located. Adjustments may be made in such rentals to reflect additional management services such as increased tenant screening, counseling, and income certification and recertifications.

(b) In determining the feasibility of a project to be located in a deteriorating residential neighborhood, the Commissioner may determine a project to be feasible with estimated fair market rental levels in excess of those than [*sic*] can be expected to attract nonsubsidized tenants in that neighborhood provided that:

(1) The estimated fair market rentals do not exceed estimated fair market rentals obtainable in comparable projects in more stable neighborhoods, and

(2) The proposed project can be expected to contribute to the stabilization or improvement of the neighborhood.

[37 F.R. 7157, Apr. 11, 1972]

itself suggests, it may well have been that HUD had no option but to insist.

Reference to the record, moreover, indicates that HUD's acquisition was indeed involuntary. An understanding of further background events, some of which were not described by the District Court, may be helpful in making a fair characterization. As noted by the District Court, rehabilitation work began in May of 1971. According to the Acting Director of the HUD District of Columbia Area Office, whose affidavit in relevant part below describes the chronology of events,[14] in March of 1972 the nonprofit sponsor asked

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[14] AFFIDAVIT OF HARRY W. STALLER

Harry W. Staller, first being duly sworn, deposes and says:

1. This affidavit is submitted for purposes of explaining the circumstances under which HUD acquired title to the Sky Tower project and other facts relevant to the relocation of Sky Tower tenants. Although I did not become Acting Director of the HUD D.C. Area Office until July 1973 the statements contained herein are based upon reports from members of my staff and documents contained in the project files, as well as my personal knowledge.

2. The sponsor of the Sky Tower project, Anacostia No. One, Inc., experienced difficulty with the original general contractor and through the mortgagee for the project Walker and Dunlop, Inc., requested in March 1972 that HUD approve a substitution of contractors and an increase in the maximum amount of the mortgage from approximately $2.9 million to $3.2 million. An interim increase in the insured mortgage is an unusual action which increases HUD's liability. In fact, it is my understanding that an interim increase had never been granted in this office prior to that time. However, because of HUD's desire to have the project completed, the requests were approved by June 1972.

3. The second contractor abandoned work on the project in November 1972. HUD allowed the sponsor to attempt to finish the project by itself. However, in January 1973, the second contractor filed a law suit against the sponsor and mortgagee and, in addition, placed a lien on the property on February 22, 1973, in violation of the terms of the construction contract.

HUD to approve a substitution of contractors and to increase the insured mortgage from $2.9 million to $3.2 million. HUD agreed to this "unusual action" of increasing its liability. After the second contractor abandoned work on the project and placed a lien on the property, the nonprofit sponsor was thrown into default. At this point, in April of 1973 HUD was informed that the *mortgagee had elected to foreclose*, as it was permitted to do by HUD regulations. The sponsor then sought a *second* increase from HUD in

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4. Since the owner was unable to bond off the mechanics lien, no further mortgage proceeds could be drawn to fund interest and construction costs. On March 1973, Walker and Dunlop, Inc., the mortgagee for the project, notified the Area Office of the default citing as a basis the fact that the contractor had quit the project, a lien had been placed on the project, and, interest due February 1 had not been paid. A copy of the notice of default is attached hereto, as Exhibit I and incorporated herein.

5. Under HUD Regulations, when a project is in default, the mortgagee has the option of either foreclosing the mortgage or assigning it to HUD. By letter dated April 4, 1973, Walker and Dunlop informed the Area Office that it had elected under the terms of the contract for mortgage insurance to foreclose on the property. A copy of this letter is attached hereto as Exhibit II and is incorporated herein.

6. In the following weeks the sponsor of the project requested another increase in the maximum amount of the insured mortgage. Because of the past history of the project and since this increase would require rents in excess of what tenants in the neighborhood could afford or would be willing to pay, HUD had no alternative but to reject this request.

7. By letter dated May 7, 1973, Walker and Dunlop notified the HUD Central Office of its intention to foreclose on the mortgage at the earliest possible date. A copy of this letter is attached hereto as Exhibit III and is incorporated herein.

8. HUD accepted title to and possession of the property on June 15, 1975, [*sic*] and subsequently paid Walker and Dunlop mortgage insurance benefits approximately in the amount of proceeds disbursed under the mortgage during construction.

the amount of the insured mortgage, which was presumably *the mortgagee's condition for allowing the sponsor to complete the work.* By HUD's account, however, "[b]ecause of the past history of the project and since this increase would require rents in excess of what tenants in the neighborhood could afford or would be willing to pay, HUD had no alternative but to reject this request." [15] *HUD's inability to extend a second insurance increase was presumably based on 24 C.F.R. § 236.56,* which, as noted, directs that mortgage insurance shall not be committed where the rents would be in excess of rents for similar housing.[16]

In sum, then, it appears from the record—and is consistent with the opinion of the District Court—that HUD's taking of title to Sky Tower was an involuntary acquisition in response to a default. Whether such acquisitions are for a "program or project" within the meaning of the Uniform Relocation Act is the issue to which I now turn.

II. "Program or Project"—Voluntary and Involuntary Acquisition

In *Caramico* v. *HUD, supra,* residents of housing units in low income areas were evicted by mortgagees seeking to recover on their mortgage insurance fol-

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[15] *Id.* at paragraph 6.

[16] *See* 24 C.F.R. § 236.56(a), *quoted* note 13 *supra.* Paragraph (b), as noted, sets out the two necessary conditions for any exception. Although the record is not conclusive on this point, it does not appear that HUD considered Sky Tower as a project suitable for exceptional treatment. By the reference in the affidavit to the project's "past history," HUD was taking note, doubtlessly, of the one increase already granted, the two abandonments by contractors, the lien placed on the property, and the original election of the mortgageee to foreclose.

lowing default. Under FHA regulations, recovery required that the mortgagee tender possession of the property unoccupied to FHA, although FHA could waive the requirement in particular cases. Although FHA had acquired the properties in *Caramico,* thus compelling the residents to move prior to the acquisition, the Second Circuit did not consider the acquisition as being "for a program or project undertaken by a Federal agency, or with Federal financial assistance." Drawing upon the legislative history as well as other provisions of the Uniform Relocation Act, *Caramico* read the "program" definition as "contemplat[ing] normal government acquisitions, which are the result of conscious decisions to build a highway here or a housing project or hospital there."[17] Acquisitions due to defaults and foreclosures, being involuntary and random, were not judged by *Caramico* as being for "a program or project."

Relying on *Caramico,* HUD argues that this acquisition likewise, being involuntary, is not for a "program or project."

In formulating its definition, *Caramico* drew upon *four* separate provisions of the Uniform Relocation Act: 42 U.S.C. §§ 4621, 4626, 4625(a) and 4651(1) and (8).[18] In addition, *Caramico* took account of the legislative history, quoting extensively from the House Report.

The *Caramico* definition is thus soundly based upon the various provisions of the statute and the intent of Congress. The examples in the House Report of typical acquisitions—for a highway or for a hospital—involve, as *Caramico* explained, conscious and planned government decisions to proceed with partic-

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[17] 509 F. 2d at 698.

[18] *Ibid.*

ular projects. In making these decisions, the Government can and must calculate in the cost of relocation. But in accepting title after a foreclosure, the Government usually has no choice about acquisition. It cannot weigh costs against benefits, including the costs of relocation, before deciding to acquire. Congress must have been aware of this very fundamental and obvious difference; an open-ended program whose cost is incalculable is not simply to be presumed in a total absence of expressed Congressional intent.

The majority opinion argues that "the mandate of the Act is precisely contrary: if the costs are too much for HUD, then the demolition should not take place." [19] This statement once again blithely ignores the issue that the majority would fain forget: that this "acquisition," *and* the subsequent action by HUD, was compelled, was *in*voluntary, and thus was not for a "project or program" within the meaning of the Act. The undisputed facts here show that HUD was forced by the mortgagee to take over Sky Tower, was confronted with a situation under which the housing could not be rehabilitated and then rented at rates permissible under the regulations,[20] and hence, more than a year after the involuntary acquisition, was forced to go the route of demolition preparatory to building something economically viable. This case is a good illustration of why Congress did *not* in the statute, either under the "acquisition" or the "notice" clause, compel HUD to pay relocation benefits in such an involuntary—and financially incalculable—situation. The majority's verbal shrug of the shoulders—"if the costs are too much for HUD, then * * *"—is an attempted brushoff of some very weighty practical

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[19] Maj. op. at 16.

[20] *See* pp. 5-6 *supra*.

operating budget considerations to which Congress, if it had desired to do what the majority claims it did, would have been compelled to give serious and detailed attention.

My colleagues' position in interpreting the statute here is not only directly contrary to that of the Second Circuit in *Caramico* but is also in direct conflict with the Seventh Circuit in *Alexander* v. *HUD*.[21] *Alexander* involves the now familiar story of an apartment project in default on the loan, continuing default, HUD foreclosure and taking over the property. The Riverhouse apartment complex was plagued by unsafe conditions, nonpayment of rent, and excessive cost of bringing the project into good condition—remarkably similar to Sky Tower here. HUD then did precisely what it did here, *i.e.*, caused notices to vacate to be served on all tenants. The plaintiff tenants sought relocation benefits, asserting that the notice to vacate made them eligible for benefits afforded to "displaced persons" within the meaning of the Act. The District Court granted summary judgment for the defendant HUD, holding that the Act was inapplicable to the closing of the Riverhouse project, and making the same analysis of the statute that the Second Circuit had made in *Caramico* and that I have urged here.

The Seventh Circuit unanimously affirmed, pointing out that "[e]ligibilty for URA benefits is also based on the requirement that a person be displaced 'for a program or project undertaken by a federal agency, or with federal financial assistance.' 42 U.S.C. § 4601(6). This requirement has been interpreted to mean construction of new federal projects."[22] The

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[21] 555 F. 2d 166 (7th Cir. 1977), *rehearing denied*, 19 September 1977.

[22] *Id.* at 169 (citation omitted).

Seventh Circuit then discussed *Caramico* at some length, and emphasized the significance of the Second Circuit's "[f]inding a crucial difference between mortgage insurance acquisitions and acquisitions under programs covered by URA."[23] The difference, according to the Seventh Circuit, was that "the Second Circuit characterized the former as 'random and involuntary while normal urban renewal contemplates a conscious government decision to dislocate some so that an entire area may benefit.'"[24] The Seventh Circuit thus agreed completely with the Second Circuit in holding that involuntary mortgage foreclosure acquisitions were not within the "programs or projects" contemplated by the Act.

Other statutory provisions, cited by *Caramico,* also suggest that acquisition by involuntary foreclosure does not come within the Uniform Relocation Act. 42 U.S.C. § 4626(a), for example, provides authority for agency action "[i]f a Federal project cannot proceed to actual *construction*" (emphasis added). And 42 U.S.C. § 4651 on methods of acquisition establishes policies on appraisal, negotiation and eminent domain.

In sum, if this acquisition is understood as having been involuntary, and if the Second and Seventh Circuits' definition of "project" as excluding such involuntary acquisitions is accepted, then appellees are not "displaced persons" within the meaning of the "acquisitions" clause in the definition. For to the extent that appellees can be said to have moved from Sky Tower as a result of the HUD acquisition, that acquisition was not "for a program or project undertaken by a Federal agency" as contemplated by the Uniform Relocation Act.

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[23] *Id.*

[24] *Id., quoting* 509 F. 2d at 698.

III. The Notice Clause

The position of the majority is that whether or not appellees are "displaced persons" under the acquisitions clause they are "displaced persons" under the notice clause because they moved as a result of HUD's notice to vacate so that HUD could carry out its "project" of demolishing Sky Tower. The majority's reading of the notice clause, however, is not consistent with the purpose that Congress meant it to serve. Moreover, the majority opinion has misunderstood the argument HUD has advanced and is thus not even responding to the reading urged by HUD, which is indeed the correct interpretation.

Before beginning this analysis it may be helpful to set out the relevant text of the definition of "displaced person:" [25]

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property, * * * or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency * * *.

A

The majority says that HUD denies the applicability of the notice clause by not classifying demolition as a "project," quoting HUD's brief [26] that only "a federal construction or rehabilitation project, such as public works or urban renewal" constitutes a "project" in HUD's estimation.[27] The sentence the majority partially quotes, however, is *not* making the

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[25] 42 U.S.C. § 4601(6) (1970).

[26] HUD Brief at 15.

[27] Maj. op. at 10.

argument attributed to it. The sentence quoted in full reads as follows:

> The legislative history shows that Congress intended to provide benefits only to people who were forced to move because of acquisition consciously and voluntarily undertaken to further a federal construction or rehabilitation project, such as public works or urban renewal.

This full sentence is further quoted in context in the long excerpt from the HUD brief reproduced *infra*. The overall argument advanced by HUD is that the Act requires an *acquisition* for a project, such as public works, to satisfy the definition of "displaced persons." HUD doubtlessly concedes that if Sky Tower were voluntarily and consciously acquired, *e.g.*, by eminent domain, in order to demolish it and sell the vacant land, there would be acquisition for a "program or project."

A careful reading of HUD's brief shows that it never argued at all that a demolition, rather than a construction, is not a "project." Not only would this argument generally be rather simple-minded, because demolition usually precedes construction, but HUD would have to know that it would be inapplicable here, as Sky Tower was concededly being torn down to make way for the construction to single-family units. Rather than making this clearly flawed argument, the HUD Brief is advancing a reading of the notice clause based upon the purpose Congress intended for it.

To avoid the ambiguity of paraphrasing HUD, reproduced in the text below is the portion of the HUD Brief (pp. 13–15) which contains its argument on the meaning of the notice clause:

> Apparently, the district court considered the involuntary nature of HUD's acquisition ir-

relevant where, as here, the person moves "as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency," even though it might be relevant where (as in *Caramico*) the tenants move "as a result of the acquisition of * * * real property * * * for a program or project undertaken by a Federal agency * * *." However, the Second Circuit made clear that in *Caramico* it was interpreting the phrase common to both clauses, "for a program or project undertaken by a Federal agency" rather than the term "acquisition" which appears only in one clause. Moreover, there is no basis for distinguishing between the nature of the acquisition in the two provisions. An "acquiring agency" in the "notice" clause should refer to the same type of acquisition as does the "acquisition" clause.[10] [[10] There is, of course, a presumption that the same word used in different parts of a single statute is intended to have the same meaning each time. *Helvering* v. *Stockholms Enskilda Bank,* 293 U.S. 84, 87 (1934)]. The volitional nature of the acquisition is the same for both classes of displaced persons. And in both clauses there must be acquisition "*for* a program or project." At the time HUD acquired Sky Tower, no decision regarding disposition of the property had been made. Over a year elapsed before HUD decided to raze the buildings. Thus, the property was not acquired for any program or project. *The provision relied on by the district court (the notice provision) was enacted to assure that people who move prior to actual acquisition can receive benefits if they receive a notice from the acquiring agency of its intention to acquire the property* [emphasis added]. Therefore, benefits accrue to an individual before acquisition occurs and even in the event it never occurs. H. Rept. No. 1656, 91st Cong., 2d sess. 4 (1970). It was not intended to make

> relocation benefits available for different types of acquisitions or for different classes of programs or projects than the "acquisition" clause.
>
> The legislative history shows that Congress intended to provide benefits only to people who were forced to move because of *acquisition* consciously and voluntarily undertaken to further a federal construction or rehabilitation project, such as public works or urban renewal [emphasis added.]

As can be seen from this excerpt, HUD is contending that *even as to tenants who seek to qualify as "displaced persons" under the notice category,* it is dispositive whether the *acquisition* was *for a project or program,* that is, whether the acquisition was made as a voluntary and conscious choice. This view is textually based, as explained above, on a reading of "acquiring agency" in the notice clause as referring back to the first clause, that is, to an agency which is *acquiring* property *for* a voluntary and conscious "program or project." And the HUD view is further based, as shown by the citation to the House Report, upon the legislative intent that the notice clause should ensure coverage of those who move prior to acquisition and even in the event it never occurs.

The majority opinion is thus grossly in error when it claims "* * * the government's argument proves too much. If an 'acquisition' as that term is used in the acquisition clause is also required under the notice clause, then the notice alternative would be rendered surplusage." [28] The notice clause was put in to take care of persons displaced in advance of a *proposed acquisition which is never consummated,* as is shown in the text of this opinion, *infra.*

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[28] Maj. op. at 13.

Likewise, the majority claim that "[t]he government's argument that the notice clause requires, *in addition,* that an agency *acquire* property for a government program or project, would artificially restrict the coverage * * *" [29] This is not the government's argument at all. The government does not say that for a person to be displaced under the notice clause the agency *must acquire* the property, only that the agency *propose to acquire* and give written notice to that effect. This is the whole purpose of the notice clause; it is the majority's erroneous construction of the government's argument which alone would create a "surplusage."

B.

With the HUD position in this case now fairly set out, it appears that due to the serious clash of views, textually and otherwise, on the proper reading of the notice clause, an independent examination of the legislative history is now necessary to determine the purpose Congress meant the notice clause to serve.

The Uniform Relocation Act of 1970 originated in the Senate as S. 1. As reported out of the Committee on Government Operations and as passed by the Senate, S. 1 defined a "displaced person" as essentially any person moved from real property "as a *result of* the acquisition *or reasonable expectation of* acquisition of * * * real property, in whole or in part, by a Federal or State agency." [30] This language was patterned apparently [31] upon the definition of the 1968

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[29] Maj. op. at 13 (emphasis in original).

[30] S. 1, 91st Cong., 1st Sess. § 105(1)–(5), *reprinted in* 115 Cong. Rec. 31372 (1969) (emphasis supplied). *See id.* § 110.

[31] S. Rep. No. 488, 91st Cong., 1st Sess., 2 (1969). *See also* 115 Cong. Rec. 31535 (1969) (remarks of Sen. Cooper).

Highway Act[32] which had also referred to a "displaced person" as someone moving "as a result of the acquisition or reasonable expectation of acquisition." S. 1, however, had dropped the reference of the Highway Act to "acquisition of such real property, which is *subsequently acquired,*"[33] thereby *broadening* the definition to cover persons who move due to a reasonable expectation of acquisition even though the property is not later acquired. An examination of the deleted phrase—"which is subsequently acquired"—shows the undeniable broadening effect of the deletion, for the deleted phrase was an important limitation.

When S. 1 was reported from the House Public Works Committee, however, the language of the definition had been changed to its present form, the result of recognition of the expansion accomplished by the deletion. A "displaced person" was someone who moved from real property "as a result of the acquisition of such real property * * * or as the result of the written order of the acquiring agency to vacate real property" for a federal or federally-funded "program or project."[34] After this change by the House Committee from the language about "reasonable expectation," the House Report, accompanying the revised S. 1, assumed particular importance in defining the meaning of the notice clause. After the House Report tracks the terms of the revised S. 1 in describing the definition of "displaced person," it immediately adds: *"If a person moves as a result of such a*

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[32] Pub. L. No. 90–495, 82 Stat. 834, § 511(3) (repealed 1971).

[33] *Ibid.* (emphasis added).

[34] S. 1, 91st Cong., 2d Sess. § 1(6), *reprinted* in 116 Cong. Rec. 40163 (1970) (emphasis added).

notice to vacate, it makes no difference whether or not the real property actually is acquired." [35] While this is the only sentence in the House Report explaining the meaning of the notice clause, its evolution and antecedents render this comment clear and unmistakable in meaning. The House Report continues: [36]

> It is immaterial whether the real property is acquired before or after the effective date of the bill, or by Federal or State agency; or whether Federal funds contribute to the cost of the real property. The controlling point is that the real property must be acquired for a Federal or Federal financially assisted program or project.

The Report then gives various examples, such as that it *is* acquisition for a Federal project if a state acquires property, even with only state money, for the right-of-way for a Federal-aid highway. There are *no examples* given of "displaced persons" where the move was made as a result of notice regarding property which was *already* in the ownership of the Federal agency.

Following approval by the House, the revised S. 1 was returned to the Senate, the House indicating a refusal to go to conference. There were other changes, particularly involving judicial review, that occupied the attention of the Senate in its renewed consideration. The only apparent reference to the change in definition was in a memorandum on "points of significant concern" submitted by Senator Percy on be-

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[35] H.R. Rep. No. 1656, No. 91st Cong., 2nd Sess. 4, *reprinted in* [1970] U.S. Code Cong. & Ad. News 5850, 5852.

[36] *Id.* (emphasis added).

half of the Administration. The relevant paragraph provides as follows:[37]

> *Definition of displaced person.* The House bill would limit the status of displaced person to those who move as the result of the acquisition of, *or written notice to vacate,* real property. The Senate version would provide a broader definition which includes those who move as the result of acquisition *or reasonable expectation of acquisition.*

In the estimation of the Administration, then, the House language requiring notice was seen as narrowing the coverage from those who move as the result of "reasonable expectation of acquisition" to those who receive a written notice prior to such expected acquisition, although the memorandum makes no judgment about the desirability of this change. The Senate again passed S. 1 and the President signed it into law.

Looking back at the legislative history, the purpose which should be attributed to the notice clause seems clear. The original bill, S. 1, had provided a broad definition of "displaced persons," covering those who moved with a "reasonable expectation" that an agency would acquire their housing for a project even if the agency did not ultimately make the acquisition. This definition, however, appears to present obvious problems of administration, particularly as it may call for many individual determinations on "reasonableness" based on the facts of each case, with all determinations subject to judicial review.[38] The House

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[37] 116 Cong. Rec. 42139 (1970) (emphasis supplied).

[38] *See, e.g., United States* v. *Braddy*, 320 F. Supp. 1239, 1241 (D. Ore. 1971), which held that by the phrase "reasonable expectations" in the 1968 Highway Act "Congress intended the proper state agency to weigh each case on its own merits."

change, to replace "reasonable expectation" with "written notice" from the "acquiring agency," appears to have been an effort to simplify and regularize the definition by limiting coverage to those with specific notice. The change would also have the effect of narrowing the definition since generally for most projects, like highway construction, there would be fewer people receiving written notice to vacate than would have a reasonable expectation that their residences might be acquired.

The House and Senate versions, though, shared *the same purpose:* as the House Report said, *this supplemental definition meant to cover those given notice who moved prior to acquisition or who moved even though the anticipated acquisition did not occur.* This appears to be the limited purpose envisioned for the notice clause. It was designed to provide a more concrete standard than "reasonable expectation" of acquisition. If anything, the change by the House *limited* the definition, and certainly did *not vastly expand it by covering* all persons displaced with notice from property *already owned and acquired* by the agency. In short, the "displaced persons" meant to be covered by the Uniform Relocation Act are those connected with the acquisitions or anticipated acquisitions by agencies for their programs.

It is thus dispositive here whether Sky Tower was acquired for a program or project, as discussed in Parts I and II above. This is the basic issue which separates my view from the views of my colleagues; whether the acquisition, or the notice clause is involved, the acquisition or notice of proposed acquisition must be an "acquisition for a program or project." There can be no such acquisition if HUD's accession to title is involuntary. Caramico, Alexander, and *Harris, supra.*

C.

The meaning of the notice clause found in the legislative history also draws support from other provisions of the Act as well as from the available case law. Title I of the Uniform Relocation Act contains the general provisions, including definitions; Title II sets out the actual relocation assistance to be provided. Section 202, for example, specifies the compensation for moving and related expenses; it begins:[39]

> Whenever the *acquisition* of real property *for a program or project* undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person * * *.

Section 205, concerning the advisory services for relocation assistance, also contains an identical introduction, about the "acquisition" of real property.[40] These occasional introductions are presumably meant as rough paraphrases of the coverage of the Act, being of significance here, therefore, for their focus on "acquisition" for a project as a condition for benefits. There is no suggestion that these clauses, found seemingly at random in two of the sections of Title II, mean that there should be different benefits available to "displaced persons" qualified by the acquisition clause than for those qualified by the notice clause, defined by majority in such a way as to be independent of the acquisitions requirement.

Title III of the Act, concerning uniform acquisition policy, also appears to lend some support to the HUD position. Section 301(5) directs all agencies to schedule construction projects in such a way that no

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[39] U.S.C. § 4622(a) (1970) (emphasis added).

[40] *Id.* § 4625(a).

person occupying real property is required to move "without at least ninety days' *written notice* * * * of the date by which such move is required." [41] This clear-cut directive, which agencies must meet "to the greatest extent practicable," ties in well with the "written notice" clause as an alternative definition. Once a person receives the written notice directed by section 301(5), he assuredly becomes a "displaced person" and can begin to take advantage of the Act's benefits, including advisory services and rental replacement supplements, at least ninety days before actually having to vacate.

Lastly, there is unanimous case support for the HUD view that the Uniform Relocation Act does not apply to persons displaced from *property already in the ownership* of the concerned agency, even though a notice to vacate for a project may be given. In *Harris* v. *Lynn*,[42] the tenants seeking to qualify as "displaced persons" were required to move so that the ill-fated public housing projects of Pruitt-Igoe in St. Louis could be demolished. The tenants argued that

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[41] *Id.* § 4651(5) (emphasis added).

[42] 411 F. Supp. 692 (E.D. Mo. 1976), *aff'd*, 555 F. 2d 1357 (8th Cir. 1977). It appears that the *Harris* courts treated "acquisition" in the "acquisition" clause and "acquiring agency" in the "notice" clause as functional equivalents, thus disposing of the majority's attempt to distinguish this case. Maj. op. at 12 & n. 29. Not only did the Court of Appeals "adopt the factual statement and legal reasoning" of the District Court, but also specifically stated, "The plaintiffs' eligibility for assistance, in essence, turned on the resolution of two issues: (1) whether there was an 'acquisition' for a program or project of a Federal Agency, and (2) whether the demolition was part of a comprehensive city demonstration program * * *." 555 F. 2d at 1360. The majority's efforts to distinguish *Harris*, like its efforts to distinguish *Alexander*, simply won't wash.

the projects were essentially "federal" lands, due to various loan and trust arrangements, and "that to deny relocation benefits to individuals forced to move from 'federal' lands while granting such benefits to those displaced as a result of the 'acquisition' of such lands would run counter to the Congressional purpose and intent." [43] The District Court agreed: [44]

> *It is clear to us, however, that Congress advisedly limited the eligible class (in Section 4601(6)) to those forced to move as a result of an "acquisition."* There are, for example, a number of references in the Act to "acquisition" and "acquiring agency."

Those tenants, although displaced-in-fact, were thus denied coverage because they had not moved as a result of an *acquisition* of their dwellings. On appeal the Eighth Circuit "adopt[ed] the factual statement and legal reasoning set forth in the District Court's opinion and affirm[ed] that decision as to the issues it reaches." [45]

If, as the Eighth Circuit has maintained, Congress meant to provide coverage only for displacements connected with acquisitions, it would depart from that purpose to read the notice clause as the majority reads it here. Whenever an agency wishes to vacate property it already owns for some new "project or program," it presumably gives written notice to the occupying tenants. If that notice alone is said to qualify the tenants as "displaced persons," then the Act will be applying to all varieties of displacements that are not remotely related to "acquisitions." Based on the legislative history, other provisions of the stat-

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[43] 411 F. Supp. at 695.

[44] *Id.* (emphasis added).

[45] 555 F. 2d at 1359.

ute, and available case law, I believe instead that in its definition of "displaced person" the Uniform Relocation Act is concerned with displacements from "acquisitions." And, thus, in this case, since the involuntary taking of the property due to default and foreclosure was not an "acquisition" for a "program or project," these appellees cannot be "displaced persons."

This was exactly what the Seventh Circuit held in *Alexander* v. *HUD, supra.* The court's description of plaintiffs' argument in *Alexander* neatly describes plaintiffs' argument here: "The tenants in this case contend that *Caramico* is distinguishable factually since in *Caramico* HUD was not the mortgagee, did not foreclose on the mortgage, and did not purchase the property from which the tenants were evicted. Further, plaintiffs argue *Caramico* involved the *acquisition aspect* of 42 U.S.C. § 4601(6), whereas here plaintiffs rely on the aspect of that section dealing with a *written order to vacate* by the acquiring agency."[46] The Seventh Circuit squarely and unanimously rejected this argument, the position of my two colleagues here, saying: "Although distinguishable with respect to particular facts, *Caramico* involved the same inquiry as presented by this case, i.e., whether the activity of the governmental agency was 'for a program or project undertaken by a Federal agency, or with Federal financial assistance.' In this case, we conclude that HUD's written order to the tenants of Riverhouse to vacate by December 31, 1974 was not for such a program or project."[47] No legal

[46] 555 F. 2d at 169 (emphasis supplied).

[47] *Ibid.*

legerdemain can distinguish the Seventh Circuit's holding in *Alexander* from the case at bar.[48]

IV. Overall Purpose of the Act

As the Seventh and Eighth Circuit cases and this case all illustrate, there may be persons displaced in fact from buildings already in the ownership of state or federal agencies who do not quality as "displaced persons" even though the displacement results from a "program or project," *i.e.*, demolition. A reading of the definition as it was intended by the Uniform Relocation Act leads, as I have shown, to this conclusion. Before resting with this conclusion, however, it may be instructive to ask whether this outcome, excluding these appellees from coverage, is consistent with the overall structure of the Act, apart from whether it accords with the definition. After all, as the Act itself makes clear, a primary purpose is to assure that displaced persons "shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."[49] Is there any support in the Act, apart from the definition, for establishing coverage for persons displaced due to acquisitions for programs but denying coverage for persons displaced from property already owned by the agency?

Looking elsewhere in the Act, it appears that Congress made an express provision that certain persons displaced in fact by federal aid or a federal agency would be considered "displaced persons" *even though*

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[48] The quoted sentence from *Alexander*, by which in note 27 the majority attempts to distinguish the Seventh Circuit case, constitutes simply an additional reason for a conclusion already reached on the *Caramico* rationale, as a reading of the whole opinion plainly shows.

[49] 42 U.S.C. § 4621 (1970).

the displacement may not have resulted from acquisition. As set out in full below, section 217 of the Act [50] provides that persons who have to move as a result of certain federal aid programs involving urban renewal shall, "for the purposes of this [title], be deemed to have been displaced as the result of the acquisition of real property." In other words, under these named programs there may be extensive displacement, from public housing projects, for example, without any federal or federally-financed state acquisition of real property. Section 217, therefore, is designed to cover displacements caused by these named activities even though there was no acquisition. This section does what Congress did not do in the section at issue here, and rather completely refutes the majority claim "that if Congress had explicitly considered * * *, it would have approved an interpretation of the Act making benefits available for such persons." [51] Congress did so—when it desired to do so.

If the notice clause had the meaning given it by the majority, it would have been completely unnecessary for Congress to have enacted section 217. The persons displaced by these urban renewal programs would undoubtedly have been given notices to vacate "for" these projects and would have been qualified under

[50] 42 U.S.C. § 4637 (1970): "A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after January 2, 1971, as a direct result of any project or program which receives Federal financial assistance under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this subchapter, be deemed to have been displaced as the result of the acquisition of real property."

[51] Maj. op. at 16.

the notice clause, as the majority reads it. The fact, however, that Congress had to provide special coverage for these persons suggests that it did not intend that all persons displaced from property already owned by an agency would be eligible for benefits. The fact that Congress provided special coverage as to certain named programs also suggests that it is for Congress to decide when to extend coverage to other persons displaced from property already owned. There may be reasons of equity or policy for the Uniform Relocation Act to reach *all* persons displaced as a result of federal programs, regardless of whether their property is acquired or already owned by the relevant agency. But as the Act is now structured we are obliged to follow the definition as phrased and as intended and to leave questions of additional coverage to Congress.

As a closing note of caution, I would ask the majority to consider the consequences of what may well have happened here had HUD accepted the meaning of the notice clause as the majority has interpreted it now. If HUD knew that once it acquired a building with tenants, however involuntary the acquisition, these tenants would become "displaced persons" if HUD ever served them with notice to vacate "for" another project, then what could very likely have been the HUD response? *HUD might well have insisted,* as it had every legal right to do, *that the mortgagee evict all the tenants before* HUD would accept the property and pay out the mortgage insurance. Being evicted by the mortgagee, the tenants would clearly not have been "displaced persons" according to the interpretation in *Caramico* and even more squarely on point in *Alexander.*[52] In brief, as the notice definition

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[52] *See also Moorer* v. *HUD* (No. 76-1830, 8th Cir. 9 September 1977).

now stands in this Circuit, there will be greater incentive for HUD to *insist upon taking title without tenants in occupancy,* thereby avoiding what it regards as the "substantial" financial burden of the majority's interpretation.[53] The irony of the result in this case is that the majority may be hurting the urban poor among the displaced more than helping them.

V. Conclusion

In summary, I agree with the Second Circuit in *Caramico* v. *HUD,* with the Eighth Circuit in *Harris* v. *Lynn,* and with the Seventh Circuit in *Alexander* v. *HUD.* All three of our sister circuits have held that where there is an *in*voluntary acquisition of property by HUD the evicted tenants are not "displaced persons" within the meaning of the Act. My colleagues have tried valiantly to distinguish *Caramico* by saying it clearly turned upon the "acquisition" clause defining "displaced persons," but the Eighth Circuit in *Harris* v. *Lynn* and the Seventh Circuit in *Alexander* v. *HUD* dealt with the "notice" clause definition of displaced persons, which is involved in our case. In each instance the Court of Appeals unanimously affirmed a District Court reaching the decision I would reach here. In light of the analysis of the statute in these three cases by twelve federal judges, and the unanimous conclusion reached in each case, I respectfully suggest that the reasons advanced by my two colleagues here are unpersuasive, certainly inadequate to overcome the weight of both reason and authority manifested in the other three circuits. I therefore respectfully dissent.

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[53] HUD Brief at 21–23.

APPENDIX B

United States Court of Appeals for the District of Columbia Circuit

SEPTEMBER TERM, 1977

(No. 75-2268)

SADIE E. COLE,

v.

PATRICIA ROBERTS HARRIS, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., APPELLANTS

(No. 75-2269)

SADIE E. COLE, ET AL., APPELLANTS

v.

PATRICIA ROBERTS HARRIS, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Before: BAZELON, *Chief Judge,* MCGOWAN AND WILKEY, *Circuit Judges.*

Judgment

These causes came on to be heard on the records on appeal from the United States District Court for

the District of Columbia and were argued by the parties. On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court that the judgments of the District Court appealed from herein are hereby affirmed in part and reversed in part, in accordance with the opinion of this Court filed herein this date.

Per Curiam.

For the Court,

GEORGE A. FISHER,
Clerk.

Date: November 14, 1977.

Opinion for the Court filed by Chief Judge Bazelon.

Dissenting opinion filed by Circuit Judge Wilkey.

APPENDIX C

United States District Court for the District of Columbia

(Civil Action No. 74–1872)

SADIE E. COLE, ET AL., PLAINTIFFS

v.

CARLA A. HILLS, ET AL., DEFENDANTS

Order

Upon consideration of the complaint, the motions of the parties for partial summary judgment respecting plaintiffs' claim for relief based upon the Uniform Relocation Assistance and Real Property Acquisition and Policies Act of 1970, 42 U.S.C. 4601 *et seq.* (hereinafter referred to as "the Act"), the memoranda of points and authorities, exhibits and argument of counsel in support thereof and in opposition thereto and the Court being advised in the premises, it is by the Court this 12th day of September, 1975, pursuant to 28 U.S.C. 2201.

Declared and adjudged that by having come into possesion of the Sky Tower Apartment project as the result of a mortgage default, HUD was "the acquiring agency" within the meaning of the Act; and it is further

Declared and adjudged the notices of September 27, 1974 advising Sky Tower tenants to vacate were the "written order of the acquiring agency to vacate real

property" within the meaning of the Act; and it is further

Declared and adjudged the notices aforesaid were "for a program or project undertaken by a federal agency" within the meaning of the Act, to wit, the demolition of Sky Tower; and it is further

Declared and adjudged that all persons who were tenants at Sky Tower as of September 27, 1974 and vacated their apartments on or after that date and prior to August 1, 1975 are "displaced persons" to whom the Act's benefits are available; and it is finally

Declared and adjudged said tenants who vacated their apartments as a result of the notice of September 27, 1974 are entitled to a prorated portion of the benefits provided under Section 204 of the Act for the period commencing upon the date of their move from Sky Tower and terminating August 1, 1975 (or the date on which any such person returned to Sky Tower, if earlier than August 1, 1975), by which dates the avaliability of apartments at Sky Tower for tenants shall be deemed to constitute provision of comparable relocation housing as required by sections 205(c)(3) and 204(1) of the Act, so as to waive the provisions of any other benefits under the Act to said tenants; and it is

Ordered that, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Court hereby directs entry of a final judgment as to this one of several claims of the plaintiffs, there being no just reason for delay.

The reasons for the certification under Rule 54(b) (see *Allis-Chalmers Corp.* v. *Philadelphia Electric Co.*, 3rd Cir., July 10, 1975), are as follows:

1. The adjudicated and unadjudicated claims are separate and distinct.

2. There is no possibility that the need for review will be mooted by future developments in the district court.

3. There is no possibility that the reviewing court will have to consider the issue a second time.

4. No claim or counterclaim has been presented which could result in set-off against the judgment sought to be made final.

5. The issue defendants have raised is of general public importance warranting prompt appellate disposition, and is certainly not frivolous; to some extent this is a case of first impression; and the needs of plaintiff class warrant reaching a final disposition of this issue without awaiting determination of the other issues in the litigation.

The Court accepts defendants' understanding that, because this order provides for declaratory rather than injunctive relief, defendants are not required to make payments hereunder pending final decision on appeal.

GERHARD A. GESELL,
United States District Judge.

U.S. GOVERNMENT PRINTING OFFICE: 1979

Supreme Court, U. S.
FILED
AUG 15 1978
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1463

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.,
Petitioners

—*v.*—

SADIE E. COLE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED APRIL 13, 1978
CERTIORARI GRANTED JUNE 19, 1978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1463

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.,
Petitioners

—*v.*—

SADIE E. COLE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

INDEX*

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* A copy of the opinion of the United States Court of Appeals for the District of Columbia Circuit was reproduced as Appendix A to the petition for a writ of certiorari (pp. 1A-49A). The judgment of the court of appeals was reproduced as Appendix B to the petition (pp. 50A-51A).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL DOCKET

DATE	PROCEEDINGS
1974	
Dec 23	Complaint. appearance; Exhibits (2) filed
Dec 23	Summons, Copies (6) and Copies (6) of Complaint issued
Dec 23	APPLICATION of pltfs. for temporary restraining order; P & A's; Exhibit A thru E w/appendix.
Dec 23	MOTION of pltfs. for leave to proceed in forma pauperis; Affidavits (3).
Dec 23	LEAVE to file without prepayment of costs granted. (fiat) Jones, ACJ
Dec 23	MOTION of pltfs. for appointment of Jacqueline Fiddermon as special process server; P & A's.
Dec 23	ORDER appointing Jacqueline Fiddermon as special process server to serve upon all defts. By Clerk
Dec 23	MOTION of pltfs. for preliminary injunction; P & A's.
Dec 24	APPLICATION of pltfs. for TRO heard, denied 12-24-74 at 2:10 P.M. (FIAT) (Rep-T.Dourian) Gesell, J.
Dec 24	AFFIDAVITS of Jacqueline V. Fiddermon, Irma Francis, Beverly Montgomery, Sadie E. Cole, Donald Humphrey with attachment & certificate of service filed.
1975	
Jan 13	MOTION of deft. Lynn for extension of time to oppose motion of pltfs. for preliminary injunction; P & A's; c/s 1/13/75. Appearance of Robert M. Werdig, Jr., AUSA.

DATE	PROCEEDINGS

1975

Jan 14 APPEARANCE of Jeffrey L. Squires as counsel for pltfs.; cd/n

Jan 14 OPPOSITION by pltfs to motion of deft. #1 for an enlargement of time; exh. A & B; c/s 1-14-75.

Jan 14 INTERROGATORIES by pltfs to defts; c/m 1-14-75.

Jan 14 ORDER extending time for U.S. Attorney to oppose motion for preliminary injunction through 1-20-75. (N) Gesell, J.

Jan 17 TRANSCRIPT OF PROCEEDINGS; December 24, 1974; pp. 1-48. (Rep. Tom Dourian) Court's copy

Jan 20 ORDER granting motion of pltf. to proceed in forma pauperis. (N) Gesell,J.

Jan 20 LETTER from counsel for pltfs. re: omittance of attachment to interrogatories filed 1/14/75; Exhibit A.

Jan 21 MOTION of plaintiffs to add party plaintiffs in forma pauperis; affidavits (5); c/m 1/20/75.

Jan 21 MOTION of plaintiffs to add plaintiffs or, in the alternative, for intervention; affidavits (4); c/m 1/20/75.

Jan 22 MEMORANDUM by defts. of Points and authorities in opposition to application by pltfs. for preliminary injunction; Exhibits A, B, C, D, E, F, G, H (2); c/m 1/22/75.

Jan 24 WITHDRAWAL of appearance of Sherwin Kaplan as counsel for plaintiffs. CD/N

Jan 24 MOTION of plaintiffs for class certification; P & A's; c/s 1/24/75.

Jan 24 SUPPLEMENTAL memorandum by plaintiffs in support of motion for preliminary injunction; appendices; affidavits of Carla Cohen w/attachments; second affidavit of Donald F. Humphrey w/exhibits A thru K; Appendix A & B; affidavit of Gloria Thomas w/exhibit; affidavit of

DATE	PROCEEDINGS

1975

Cynthia Cole; affidavit of Joyce Rice; affidavit of Grace Gray; affidavit of Edwin G. Callahan w/exhibit A; affidavit of Marilyn Melkonian; affidavit of Louis L. Joseph; Supplemental affidavit of Sadie Cole; c/s 1/24/75.

Jan 27 HEARING on motion for preliminary injunction. (Rep: Watson) Gesell,J.

Jan 27 TEMPORARY restraining order granted, restraining defts. from demolishing buildings and removing tenants. (Rep: Watson) Gesell,J.

Jan 28 TEMPORARY restraining order; No bond required; counsel to submit proposed findings of fact, conclusions of law and a form of order of preliminary injunction by 2-3-75; Issued 11:30 A.M. (N) Gesell, J.

Jan 31 MOTION of pltfs. for civil contempt w/P & A's in support; affidavit of James A. Lee; c/s 1/31/75.

Feb 3 TRANSCRIPT of proceedings of Jan 27, 1975, pp. 1-6. (Rep: Ida Z. Watson) COURT COPY

Feb 3 MOTION of pltfs. for civil contempt heard and dismissed. (Rep: Watson) Gesell, J.

Feb 3 MOTION of pltfs. for civil contempt "dismissed". (fiat) (N) Gesell, J.

Feb 5 ORDER granting motion of pltfs. for a class action; directing all present tenants of Sky Tower Apartments and all former tenants who have moved from apartments since 6-15-73 be certified as a class. (N) Gesell, J.

Feb 6 MOTION of pltfs. for leave to file supplemental material in support of motion for preliminary injunction; Exhibit; c/s 2/6/75.

Feb 7 FINDINGS of fact and conclusions of law. (N) Gesell, J.

DATE	PROCEEDINGS

Feb 7 ORDER granting in part and denying in part motion by pltfs. for preliminary injunction and directing all counsel to appear on 3-3-75 at 9:30 A.M. (N) Gesell, J.

Feb 11 ORDER granting motion of pltfs. to add Annette Raines, Lily Kornegay, Grozelia Stepney, Sarah Blue & Sky Tower Tenants Assoc. as pltfs. & directing that they be permitted to proceed in forma pauperis. (N) Gesell, J.

Feb 11 ORDER granting motion of pltfs. to add Lily P. Kornegay, Grozelia Stepney, Annette Raines, Sarah C. Blue & Sky Tower Tenants Assoc. as party pltfs. (N) Gesell, J.

Feb 11 ORDER granting motion of pltfs. for leave to file supplemental material. (N) Gesell, J.

Feb 11 AFFIDAVIT of Ann M. Meister w/tenant questionnaires (25) filed pursuant to order of 2/11/75.

Feb 21 ANSWERS by defts. to first set of interrogatories; Appendices 1 & 2; c/m 2/21/75.

Feb 21 MOTION of defts. for extension of time to answer, move or otherwise plead to the complaint; Exhibit; c/m 2/21/75.

Feb 24 MOTION by pltfs. for free transcript; P & A's; c/m 2-24-75.

Feb 28 RESPONSE by pltfs. to first weekly report by defts. and motion by plfts. for further relief; Exhibits A thru J; c/s 2/28/75.

Feb 28 WEEKLY REPORT by defts.; c/m 2/28/75.

Mar 3 STATUS CONFERENCE (Rep: Watson) Gesell, J.

Mar 3 ORDER granting motion of pltfs. for free transcript. (N) Gesell, J.

Mar 3 ORDER extending time for defts. to answer complaint through 3/21/75. (N) Gesell, J.

Mar 7 TRANSCRIPT OF PROCEEDINGS, Jan. 27, 1975, pages 1-59. Court's copy. (Rep: Ida Z. Watson)

DATE	PROCEEDINGS

1975

Mar 7 TRANSCRIPT OF PROCEEDINGS, March 3, 1975, pages 1-9. Court's copy. (Rep: Ida Z. Watson)

Mar 7 STATUS CONFERENCE (Rep: Watson) Gesell, J.

Mar 13 WITHDRAWAL by pltfs. of response to first weekly report and motion for further relief w/P & A's; c/s 3/7/75.

Mar 13 TRANSCRIPT OF PROCEEDINGS, Mar. 7, 1975, pages 1-12. Court's copy. (Rep: Ida Z. Watson)

Mar 14 FOURTH Weekly Report by defts.; c/m 3-14-75.

Mar 18 MOTION of pltfs. for free transcript of status hearing of March 7, 1975 w/P & A's; c/m 3/17/75.

Mar 21 MOTION of defts. for extension of time to answer, move or otherwise plead to the complaint; c/m 3/21/75.

Mar 24 FIFTH Weekly Report by defts.; c/m 3/21/75.

Mar 28 SIXTH Weekly Report by defts.; c/m 3-28.

Apr 1 ERRATA by defts. to Memorandum of P & A's to motion to dismiss, etc.; c/m 4/1/75.

Apr 1 MOTION of defts. for partial relief from Court order of Feb. 7, 1975; P & A's; c/m 4/1/75.

Apr 1 MOTION of defts. to dismiss the action or, in the alternative, for summary judgment; Statement of material facts; P & A's; Exhibits I, J, K, L, M; c/m 3/28/75.

Apr 2 ORDER granting motion of defts. for an enlargement of time through 3-28-75 to answer the complaint. (signed 3-27-75) (N) Gesell, J.

Apr 7 SEVENTH Weekly Report by defts.; c/m 4/7/75.

Apr 7 NOTICE of appeal by defts. from order of Feb. 7, 1975. Copy mailed to Florence Roisman. No fee-U.S. Govt.

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Apr 11 MOTION by pltffs' for extension of time and points and authorities in support; c/m 4-10-75.

Apr 11 EIGHTH Weekly Report by defts.; c/m 4-11-75.

Apr 14 ORDER granting motion of pltfs for extension of time 4/23/75. Gesell, J. (N)

Apr 18 MOTION of pltfs. for extension of time to oppose defts. motion for partial relief; c/m 4/16/75.

Apr 21 NINTH Weekly Report by defts.; c/m 4/18/75.

Apr 23 COUNTER STATEMENT by pltfs. of material facts in dispute; c/m 4/23/75.

Apr 23 OPPOSITION by pltfs. to motion by defts. to dismiss or, in the alternative for summary judgment; c/m 4/23/75.

Apr 28 TENTH Weekly Report by defts.; c/m 4/25/75.

Apr 25 ORDER granting motion of pltfs. for extension of time through 5-9-75 to oppose motion of defts. for partial relief. (N) Gesell, J.

May 2 ELEVENTH Weekly Report by defts.; c/m 5/2/75.

May 9 TWELFTH Weekly Report by defts.; c/m 5/9/75.

May 9 MEMORANDUM by pltfs. in opposition to motion by defts. for partial relief from Court's order of Feb. 7, 1975; Exhibits A thru J; c/s 5/9/75.

May 14 REPLY by defts. to opposition by pltfs. to motion by defts. for summary judgment; Affidavit of Harry W. Staller w/Exhibits 1 & 2; c/s 5/14/75.

May 15 MOTION of defts. for extension of time for transmission of record on appeal to and including July 7, 1975; c/m 5/15/75.

May 16 MOTION of pltfs. for supplementary order; memorandum; affidavits (3); attachment (1); Appendix A; c/s 5-16-75.

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May 16 ORDER granting motion of defts. an extension of time for transmittion of the record to the Court of Appeals through 7-7-75. Gesell, J.

May 15 MOTION of government to dismiss & motion of government for partial relief heard & taken under advisement. (Rep: Watson) Gesell, J.

May 20 THIRTEENTH Weekly Report by defts.; c/m 5/16/75.

May 21 MEMORANDUM and order directing deft. HUD to submit within ten days a detailed plan for achieving full compliance with the Court's order within 30 days; denying motion of defts. to dismiss and the motion for partial stay of the preliminary injunction. (N) Gesell, J.

May 23 FOURTEENTH Weekly Report by defts.; c/m 5/23/75.

May 23 MOTION of pltfs. for partial summary judgment; Exhibits A, B, C; Statement; c/s 5/23/75.

May 23 MOTION of defts. for stay pending appeal; P & A's; denied, (flat) (N) Gesell, J.

May 23 NOTICE of appeal by defts. from order of May 21, 1975. Copy mailed to Florence Wagman Roisman. No fee- U.S. Govt.

May 28 MEMORANDUM by pltfs. of points and authorities in opposition to motion for stay pending appeal; c/m 5/27/75.

May 28 REQUEST by defts. to file plans for rehabilitation of Sky Tower Apts.; Plans attached.

May 30 RECORD on appeal delivered to U.S.C.A.; receipt acknowledged. (U.S.C.A. No. 75-1543 from appeal of 5/23/75)

May 30 FIFTEENTH Weekly Report by defts.; c/m 5/30/75.

DATE	PROCEEDINGS

1975

June 6 SIXTEENTH Weekly Report by defts.; c/m 6-6-75.

June 9 ORDER to show cause returnable 6-25-75 at 3:00 P.M. (N) Gesell, J. Werdig ser: 6/10/75; Crawford & Cameron ser: 6/12/75; Staller & Belcher ser: 6/11/75.

June 13 SEVENTEENTH Weekly Report by defts.; c/m 6/13/75.

June 20 CERTIFIED copy of USCA order denying motions by appellants for stay pending appeal and for expedited appeal.

June 23 MEMORANDUM by pltfs. in support of Court's order to show cause dated June 9, 1975; Exhibits A & B; c/s 6/23/75.

June 24 WEEKLY report by defts.; c/m 6/24/75.

June 25 AFFIDAVIT of Harry W. Staller w/attachments (6); c/s 6/25/75.

June 25 SUPPLEMENTAL Affidavit of Edward J. Steptoe, Jr.; c/s 6-25-75.

June 25 TRANSCRIPT of Proceedings of May 15, 1975; pages 1 thru 50; Rep. Ida Z. Watson; Court Copy.

June 25 HEARING on Order to Show Cause, no action taken. (Rep: Watson) Gesell, J.

July 1 MOTION of defts. to set time for filing response to motion of pltfs. for partial summary judgment and to complaint; P & A's; c/m 7-1-75.

July 1 REQUEST by deft. to file weekly report; attachment.

July 3 SUPPLEMENTARY motion of Pltff for a free transcript; P & A; c/m 7-2-75

July 3 TRANSCRIPT of proceedings of June 25, 1975; pages 1-84 Rep: Ida Watson COURT COPY.

July 9 REQUEST by deft. to file weekly report; attachment.

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1975

July 9 AFFIDAVIT of Edward J. Steptoe; c/s 7-9-75.

July 2 ORDER granting motion of defts. to set time for filing response to motion of pltfs. for partial summary judgment and to answer complaint through 7-18-75. (N) Gesell, J.

Jul. 11 SECOND set of interrogatories by pltfs; c/m 7-10-75.

July 9 STATUS CALL. (Rep: I. Watson) Gesell, J.

July 14 TRANSCRIPT of proceedings of July 9, 1975, pp. 1-61 (Rep: Ida Z. Watson) COURT COPY.

July 15 REQUEST by deft. to file weekly report; attachment.

July 14 JOINT statement to Court for procedures to effectuate prompt compliance with the orders of the Court. Approved without relieving any person from responsibility for carrying out the Orders recited in D1. (N) Gesell, J.

July 18 MOTION of defts. for partial summary judgment; Statement; P & A's; c/s & c/m 7/18/75.

July 18 RESPONSE by defts. to statement of material facts by pltfs.; Exhibit; Affidavit of Harry W. Staller w/Exhibits I, II, III; c/s & c/m 7/18/75.

Jul 21 ANSWER by defendants to the complaint; c/m 7-18-75.

Jul 21 CALENDARED CD/N 7-21-75.

Jul 21 MOTION of the District of Columbia for leave to participate as Amicus Curiae; P & A's; c/m 7-21-75.
APPEARANCE of Morris Kletzkin, Asst. Corp. Counsel, D.C. (District Bldg. Washington, D.C. 20004)

Jul 22 WEEKLY report by defendants; c/s.

Jul 24 MOTION of defts. for joinder of The District of Columbia as a party deft. and Opposition to motion of the District of Columbia for leave to participate as amicus curiae; P & A's; c/s & c/m 7-24-75.

DATE	PROCEEDINGS

1975

Jul 24 REQUEST by defts. for hearing and for shortening time to respond to motion for joinder; c/s & c/m 7-24-75.

Jul 24 MOTION of pltfs. to add Mayor-Commissioner Walter Washington and The District of Columbia Government as defts. and to amend complaint; Exhibit; c/m 7-23-75.

July 28 RESPONSE of defts. to pltf's. motion to add mayor-commissioner Walter Washington and the District of Columbia Government as defts. and to amend the complaint; c/m 7-28.

July 28 STATUS Report of government defts. as to proposed consent remand order; attachment; c/m 7-28.

July 28 SUPPLEMENTAL Memorandum of P's & A's in support of motion of the District of Columbia for leave to participate as amicus curiate; c/m 7-28.

July 28 RESPONSE of pltffs. to motion by District of Columbia government for leave to participate as amicus curiae; c/m 7-28.

July 29 MOTION of pltfs. to add Mayor-Commissioner Walter Washington and the District of Columbia as defts. and to amend the complaint heard and denied; Motion of District of Columbia for leave to participate amicus curiae heard and granted; Motion of defts. for joinder of the District of Columbia as a party deft. withdrawn without prejudice. Rep. J. Blair GESELL, J.

July 30 WEEKLY Report by defts.; c/m 7-30-75.

July 30 MEMORANDUM by pltfs. in opposition to motion by defts. for partial summary judgment and in further support of motion by pltfs. for partial summary judgment; Third affidavit of Donald F. Humphrey w/Exhibits A, B, C; c/s 7-30-75.

July 31 JOINT submission by parties of question of the dog for resolution by the Court; c/m 7-31-75.

DATE	PROCEEDINGS

1975

July 31 MOTION of pltfs. for partial summary judgment argued; Granted in part and denied in part; Motion of deft. to defer the answering of interrogatories heard and granted. Rep. J. Blair GESELL, J.

Aug 7 OPPOSITION by defts. to proposed order and findings and conclusion of pltffs.; c/m 8-7-75.

Aug 13 STIPULATION for extension of time to 9-15-75 for defts to file motion to stay discovery and pltf. to have to 9-22-75 to file opposition, approved. (N) JONES, J.

Aug 22 TRANSCRIPT OF PROCEEDINGS, July 29, 1975; pages 1-40; Courts copy; Rep: J. Blair.

Aug 26 TRANSCRIPT OF PROCEEDINGS, July 31, 1975; courts copy; Rep: J. Blair

Aug 29 STATEMENT by defts accompanying proposed remand order; c/m 8-29-75.

Sept 2 MEMORANDUM by pltffs in support of proposed consent remand order; c/s 9-2-75.

Sept 4 MEMORANDUM by deft in opposition to proposed order of pltff in support of proposed order of defts; c/s 9-4-75.

Sept 4 CERTIFICATE of service by pltffs in support of proposed consent remand order and memorandum in support thereof; c/m 9-3-75.

Sept 05 REQUEST by defts. to file attached report; c/m 9-5-75.

Sept 05 STATEMENT of Amicus Curiae, District of Columbia, on proposed remand order; c/m 9-5-75.

Sept 10 HEARING on proposed order and findings and conclusions of pltff: deft to present order.

HEARING re consent remand order; Order to be filed. (Rep: Watson) GESELL, J.

DATE	PROCEEDINGS

1975

Sept 12 MOTION of defts for protective order staying discovery; P&A's; c/m 9-12-75

Sept 12 ORDER granting declaratory relief for pltfs. (N). Gesell, J.

Sept 15 REMAND Order remanding cause to the Secretary of HUD for reconsideration; setting forth directives to all parties; directing HUD to file with the Court by 2-20-76 its redetermination accompanied by its Administrative record and an appropriate motion for final disposition of the litigation; directing that the preliminary injunction, as clarified, shall remain in effect pending conclusion of the proceedings and subject to further order of the Court. (N). Gesell, J.

Sept 23 ORDER denying motion of pltfs for a free transcript. (N). Gesell, J.

Sept. 26 MOTION of pltff for extension of time to answer or reespond to defts motion for a protective order; c/m 9-25-75.

Sept 26 OPPOSITION by pltff to defts motion for a protective order staying discovery; c/m 9-25-75.

Sept. 30 CERTIFIED copy Order USCA dated 9-29-75 granting motion to dismiss appeal as moot.

Sept 30 ORDER granting motion of pltfs. for an extension of time to respond to a protective order staying discovery; extending time thru 9-26-75. (N) Gesell, J.

Oct 8 TRANSCRIPT OF PROCEEDINGS, September 10, 1975; pages 1-30; courts copy; Rep: I. Watson.

Oct 8 TRANSMITTAL sheet from USCA returning three volumes of original record from the District Court with reporter's transcripts (5 vols.) and one envelope of exhibits.

SKY TOWER APARTMENTS
1016 Wahler Place, S.E., Apt. 204
Washington, D.C. 20032

September 27, 1974

Ms. Beverly Montgomery
1034 Wahler Place, S.E. #103
Washington, D.C. 20032

Dear Ms. Montgomery:

The Department of Housing and Urban Development has decided to raze the Skytower Apartments Project. Effective October 1, 1974, you have thirty (30) days to vacate your apartment.

We recognize the inconvenience caused by this action; thus, HUD is authorizing up to $300.00 towards moving expenses for those tenants who qualify.

Some of you may qualify for the purchase of HUD owned properties. If you are interested, please write to:

Department of Housing and Urban Development
Washington, D.C. Area Office
Property Disposition Branch
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009

If you need additional information, contact Urban Management Services at 735-5590 or the HUD area office at 382-7075.

/s/ Glenn L. French
GLENN L. FRENCH
Property Manager

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
Washington, D.C. 20413

[SEAL]

Office of the Assistant Secretary
for Housing Management

In Reply Refer To:

Mr. Sherwin Kaplan
Attorney at Law
Neighborhood Legal Services Program
635 F Street, N.W.
Washington, D.C. 20004

Dear Mr. Kaplan:

I am replying to your letter of October 22, 1974, concerning a stay in the removal of tenants from Skytower Apartments, Washington, D.C.

Please be advised that I have requested the Director of the D.C. Area Office to promptly serve each tenant with a written notice stating that they will not be forced to vacate the rental unit they occupy until February 1, 1975. It would not be prudent or reasonable for the Department to locate and serve a similar notice upon former tenants advising that the apartment previously occupied by them is available for continued occupancy.

Invitations extended to former tenants to move back to Skytower Apartments would serve to be disruptive to both the tenant, his family and the Department's plans for the project. These tenants moved upon being duly served with a notice. In effect they were merely complying with HUD's request and the law. In with the total plan to proceed with the program for this project is my personal resolve that a strong and orderly effort would be made to relocate the tenants and that no one would be put on the street without a place to live. Those tenants who have vacated their units obviously found other living accommodations or they would not have

moved. Most assuredly they were not put out on the street.

I hope this information will be helpful in letting the tenants know that the Department has been and is co-operating in this matter to its fullest extent.

Sincerely,

/s/ [Illegible]
H. R. Crawford
Assistant Secretary

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
Washington, D.C. 20413

[SEAL]

Nov. 22, 1974

Office of the Assistant Secretary
for Housing Management

In Reply Refer To:

Mr. Sherwin Kaplan
Attorney at Law
Neighborhood Legal Services
635 F Street, N.W.
Washington, D.C. 20004

Dear Mr. Kaplan:

I wish to reconfirm that I have directed the Director of the D.C. Area Office to promptly serve all tenants with a written notice stating that they will not be forced to vacate the rental unit they occupy until February 1, 1975. However, I feel that all necessary preparations must be developed regarding the programing of the removal of those tenants who are reluctant to vacate or because of rental delinquencies are not voluntarily seeking other housing. Allowances will not be made for those tenants who are delinquest in their rent.
I hope this additional information will be helpful in clarifying the Department's position regarding the relocation of tenants at Skytower Apartments.

Sincerely,

/s/ H. R. Crawford
H. R. CRAWFORD
Assistant Secretary

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT

District of Columbia, ss:

I, Irma Francis, being first duly sworn, do depose and say:

1. I formerly lived at 1051 Whaler Place, S.E. Washington D.C., Apartment 301, with my three children and paid $77 a month for a three bedroom rental unit. I have lived at 1393 Congress Street, S.E., Apartment 201 since I left Sky Tower Apartments on October 11, 1974. My current rent is $165 a month for a three bedroom apartment. I work in the food service department at The Brookings Institute and my total income is $4,800 a year.

2. I got a notice on October 1, 1974, telling me that I had to move by November 1. I had heard rumors but had not known for sure what was going to happen. That was the first official notice I got from anybody, and it was the only notice I ever received about moving.

3. I called the rental office; they told me that if I needed assistance they had a list of 15 or 16 apartments that were available. I called each one on the list and was told there were no vacancies. I had to take eight days off from my job without pay to look for apartments. That is $22 for each day I miss work. I spent a lot of money on cab fare going to these apartments that they advertise only to get there and find that they have no vacancies or that they won't take a woman and three children. Many places require that you have an income of at least $8,000 just to qualify to apply for a

unit. Finally, I found one apartment that would accept children, but they asked for a $300 down-payment and $200 as a security deposit and I did not have this much money to put down.

4. I went to a tenants' meeting at Sky Tower early in October, and heard from other women that we had gotten an extension of time before we had to leave, but I really didn't have any idea what to believe and whether or not to stay. I wanted to stay if I could because the rent at Sky Tower was so low.

5. Even though people told me that we wouldn't have to move until January, I couldn't really rest at ease. I have children; I wanted to get settled and I did feel that they are going to tear this place down soon, no matter what they told us. I had mixed emotions about staying because I would have liked to support the tenants, and because of the rent, but I could not take the risk with my children. It's a shame to tear down Sky Tower because I lived in a fairly good apartment and feel that all the apartments could be renovated and would be good places to live. I don't know any other places that come with things like air-conditioning and disposals, for $77.00 a month.

6. On about October 11, I talked to a man from HUD, Mr. Belcher, who told me about an available apartment at Congress Park. He asked me if I could afford $165.00. I asked him if there were any places renting for less money, because with my income it would be very hard for me to support my family with a rent increase of $88.00 a month. That is more than twice what I paid at Sky Tower. He said there was nothing else available, so I took the apartment.

7. Aside from my days off at work, without pay, I had moving expenses. The rental office told me that I would get $300.00 back to pay for the moving expenses, as long as my rent at Sky Tower was paid up, which it was. I have not gotten any money or heard anything about it since I moved.

8. Some frinds of mine who lived at Sky Tower were promised three-bedroom apartments for certain rents by Mr. Belcher, and when they were ready to move that

they would get larger ones or the same size apartments for more rent than they could afford.

9. This affidavit has been read and explained to me by a person working with the lawyer who is filing this lawsuit for the tenants. I understand that my affidavit will be used to support us in getting the government to stop the demolition, to finish the renovation, and for any tenant who has left Sky Tower, to pay relocation money; and generally to make sure that the government helps us get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Irma Francis
IRMA FRANCIS

SUBSCRIBED AND SWORN TO before me this 24th day of December, 1974.

/s/ [Illegible]
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF BEVERLY MONTGOMERY

District of Columbia, ss:

1. I Beverly Montgomery, being duly sworn, do depose and say: I live at 1034 Wahler Place S.E., apartment 103, with my two children. My monthly income is $228.80 from public assistance, and the rent for my two bedroom apartment is $134.00 (BM)

2. On about October 11, 1974, I reveiced a letter from the management telling me that I had thirty days to leave because HUD was going to tear down the buildings.

3. I spoke to the National Capital Housing Authority who told me that if I was put on their waiting list, it would be a very long time until I could get an apartment. They gave me a list of about forty realtors, and I have spent every day for almost three months calling them, and calling people who put advertisements in the newspaper. Many pepole won't rent to anyone on public assistance, or to a woman alone, with two children. I have taken a lot of time to look at some apartments, but they have been in such bad condition that nobody would want to live there. A lot of the realtors I called are asking for rents that are completely beyond my ability to pay.

4. My apartment is in very bad condition now because the management will not fix it when I ask. I have asked the janitor to come fix my heat, and my window locks. He said that he would not repair anything because the dwellings were being torn down and so it dosen't matter

anymore. My bedroom has no heat, and because of the broken locks someone broke in here a few weeks ago. The ceiling fell out in the bathroom in September, and I can't get anyone to fix it. The air conditioner has not worked properly, and some tiles are loose on the living room and kitchen floors. In the apartment across from me they have ripped out all the appliances since the crew came to work here. The door is open, and children play in that mess.

5. Even though I got a letter in November telling me I could stay until the end of January, I could not believe it because of what the janitor said, and especially because they have already started to tear down the buildings, and removing things from the apartments. I have been in a terrible state of mind since this whole thing started happening. It seems like they are forcing us out more each day.

6. There are bricks, broken glass and plumbing fixtures all over the sidewalks and street. I can sometimes hear the wreckers from inside my apartment.

7. I am frightened because I have nowhere to go, and they keep tearing more buildings down around me.

8. This affidavit has been read and explained to me by a person working with the lawyers who are filing this lawsuit for the tenants. I understand that this affidavit will be used to support us in getting the government to stop the demolition, finish the renovation, and for anyone who has left, to pay relocation money, and generally to make sure that the government helps us get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Beverly Montgomery
BEVERLY MONTGOMERY

SUBSCRIBED AND SWORN TO before me this 24th day of December, 1974.

/s/ Louise B. Shelton
Notary Public

My Commission Expires June —, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF SADIE E. COLE

District of Columbia, ss:

1. I, Sadie E. Cole, being duly sworn, do depose and say:

   I live at 1034 Wahler Place, S.E. Apartment 101, with my two children. My sole source of income is $228.28 from public assistance. My rent is $84.00 a month for a two bedroom apartment. I have lived at Sky Tower since 1969, and in a renovated unit since late 1970 or early 1971.

2. I received a notice on about October 1, telling me that I had to leave in thirty days so that HUD could tear down the buildings. I have been calling real estate firms and so many of them will not rent to someone with children, or to anyone on public assistance, or else the rents are just too high, and a one bedroom apartment would be too small. I don't know where to move or what to do to find a place.

3. Because of the condition of my apartment I have been holding back on my rent. My air conditioner has not been working, I had so much water in my bedroom from the problem that it ruined two mattresses. There is also a hole in the bedroom wall which has never been fixed.

4. A short time ago there was a fire in another building, because someone turned on the gas and left it on. There are break-ins because of all the empty apartments without any security. Drunks wander in and out of the buildings. I have seen a guard, but

he is only there to look after the materials that the crew leaves lying around the streets. Since they started to tear down the buildings, I have become really afraid. The noise is terrible and the place is a mess.

5. A woman hand-delivered a letter to me awhile ago. I don't know who she was, but she told me that the marshal probably would come in the middle of January to force me out if I hadn't left by then. The letter said I had until January 31 to stay, but the woman told me something different and I don't know what to believe or do. I know that I will be forced to leave, and I have nowhere to go.

6. This affidavit has been read and explained to me by a person working with the lawyers who are filing this lawsuit for the tenants. I understand that this affidavit will be used to support us in getting the government to stop the demolition, finish the renovation, and for anyone who has left, to pay relocation money, and generally to make sure that the government helps us get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Sadie E. Cole
SADIE E. COLE

SUBSCRIBED AND SWORN TO before me this 24th day of December, 1974.

/s/ Louise B. Shelton
Notary Public

My Commission Expires June —, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

SUPPLEMENTAL AFFIDAVIT OF SADIE E. COLE

I, Sadie Cole, being duly sworn, do depose and say:

I currently live at 1034 Wahler Place, S.E. Apartment 101, but have finally been able to find another apartment to move into. Although I have applied for public housing because I am being relocated, and was told they would help me get into National Capital Housing they have given me no help, and have not offered me an apartment.

Instead my sister-in-law has helped me find and make application for a 2 bedroom apartment at Parkland, 3424 21 Street, S.E., which will cost me $156.00. This apartment has no air conditioning, unlike the ones at Skytower which had it. Also I have to put down $100 security deposit which I don't have now, but can pay when I move in after February 1. Additionally I have to pay moving expenses, and rent a truck to take my things none of which the city is reimbursing or helping me with.

The worst problem is that this new apartment costs me twice what my old one at Skytower did, it is $156. a month instead of $84. My only income is $228 monthly

from Public Assistance, so after paying rent, I have only $72. a month to support myself and two children.

/s/ Sadie Cole
SADIE COLE

SUBSCRIBED AND SWORN TO before me this 17 day of January 1975

/s/ Louise B. Shelton
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF GROZELIA STEPNEY

I, Grozelia Stepney, being duly sworn, do depose and say:

I live at 3420 22nd Street, S.E., Apt. 102. Prior to October 10, 1974, I lived at 1070 Wahler Place, Apt. 302, with my five children in a two-bedroom apartment, at a rent of $105.00. I am currently paying $188.81 for a 3-bedroom apartment.

I received a notice-to-quit on October 1, 1974. It said that I had to leave by November 1, because the buildings were going to be torn down. When I first received the notice, I immediately started to look for another apartment because I did not want to get caught with the buildings being knocked down and no place for my children and me to go.

It was a great hardship for me to find an apartment that had sufficient space for my family's needs at a rent I could afford. Being the sole supporter, my income only would allow me to rent a 3-bedroom apartment. I was forced to take time off from work, use my lunch hour to go look at apartments, and make many telephone calls from the office. When I went to look at places, I was often told that they would not rent to a single woman, without her husband signing the lease.

The apartment I found costs me $188.81, but I also had to put down one month's security deposit for the same amount. I had to borrow that money from a friend, plus $75 to pay for a U-Haul-It. There were other expenses, for example the telephone charge to transfer my service, gas expenses, things like that. Those expenses came to over $25 or $30.

I had already moved by the time people started saying that we could stay until January 1. I would not have left if I was certain that I wouldn't be out with nowhere to go on January 1. There is a vast difference between $188.81 and $105.00.

I believe that I am entitled to relief and redress from the Federal courts and desire, because of my poverty, to file this suit *in forma pauperis* under the provision of 28 U.S.C. § 1915. Although I am currently employed by the United Planning Organization and my income is $7,583, I cannot pay the costs and fees of this lawsuit or give security therefor and also provide for the necessities of life for my family and myself.

This affidavit has been read and explained to me by a person who works with the lawyer who is filing this suit for the tenants. I understand that the affidavit will be used to support the claims for an order that the government complete the rehabilitation of Sky Tower, and for relocation money and benefits for people who have moved.

/s/ Grozelia F. Stepney
GROZELIA STEPNEY

SUBSCRIBED AND SWORN TO before me this 17th day of January 1975.

/s/ Louise B. Shelton
Notary Public

My commission expires June 30, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF SARAH BLUE

I, Sarah Blue, being duly sworn, do depose and say:

I live at 1374 Savanah Street, S.E., Apt. 301. Prior to December 16, 1974, I lived at 1051 Whaler Place, S.E., Apt. 302, with my one child in a four-bedroom apartment, at a rent of $98 per month. I am currently paying $185 per month for a four-bedroom apartment. Although I do not need this large an apartment, this is the only one in Congress Park that was available to me.

I received a notice-to-quit on October 1, 1974, stating that I had to move by November 1, 1974 because the buildings were going to be demolished. I was worried about the buildings coming down, so I began right away to look for a place to live.

Although the government promised us money and assistance to move, we did not receive either. One man did help me get this apartment in Congress Park. It is close by and somewhat similar to the one I had before. The main problem is that I cannot afford the $185 monthly rent, since my income is only $192 per month from Welfare and about $15 a month from babysitting. Out of a total income of $207 monthly, I have to pay $185 rent.

I believe that I am entitled to relief and redress from the federal courts and desire, because of my poverty, to file this suit *in forma pauperis* under the provision of 28 U.S.C. § 1915. I cannot pay the costs and fees of this lawsuit or give security therefor and also provide for the necessities of life for my child and myself.

This affidavit has been read and explained to me by a person who works with the lawyer who is filing this suit for the tenants. I understand that the affidavit will be used to support the claims for an order that the government complete the rehabilitation of Sky Tower and for relocation money and benefits for people who have moved.

/s/ Sarah C. Blue
SARAH BLUE

SUBSCRIBED AND SWORN TO before me this 17th day of January 1975.

/s/ Louise B. Shelton
Notary Public

My commission expires June 30, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF LILY P. KORNEGAY

District of Columbia, ss:

1. I, Lily P. Kornegay, being duly sworn, do depose and say: I live at 1070 Wahler Place S.E. Apt. 104, with my three children. My rent for a two bedroom apartment is $105.00 and my monthly income from work and a welfare subsidy is $679.00.

2. I am the president of the Sky Towers Tenants Association, which is a group of tenants of Sky Tower who are still living here and who have been forced to move by HUD when it decided to tear down the buildings.

3. We received notices that we had to move by November 1, and the tenants were worried that they would have no place to go. Most of all, we all wanted to stay because of the very low rents we were being charged here, and because if they would have kept up the maintenance, these apartments would be good places to live.

4. The Tenants Association held about five or six meetings between October first and the time that they started to tear down the buildings. At each meeting, we had more than half of the tenants there, I would say, and even when people left Sky Tower, a lot of them came back to the meetings because they were living in places that they couldn't afford and where the conditions were really terrible. They came to those meetings to find out whether they could possibly come back and whether anyone would give them relocation money to help pay for the higher rents.

5. Our Tenants Association had been active before this whole problem started, but once we got the notices to leave, I, and other tenants, tried to get the government and the management to reconsider their decision. We spoke to Mr. Belcher at HUD about it, and about at least getting money for people who were moving. We sent a telegram to the City Council, and to Congressman Fauntroy. We spoke to Doug Moore, who was then a candidate for City Council and is now a member of it. He came to tenants meetings. Even now that many of the families have left Sky Tower, I still talk to some of them, and they ask about relocation money. They have told me that some of the places that Mr. Belcher from HUD has found to move to are so bad that they want to move out. There are apartments on W St. where people I have spoken to are afraid for their children; there is dope in the halls, drunks lying around, and the condition of the apartments is terrible. Other families I speak to that are living in Congress Park, and Coral Hills, which is in Maryland, just cannot afford the higher rents much longer and don't know what to do.

6. As for me, I have one child with a hole in his heart, and another with asthma. Both go to Children's Hospital now. Mr. Belcher told me that the only place I might be able to move to is Coral Hills, but since that is in Maryland, I would lose all my welfare benefits, my caseworker told me. That is something I cannot afford to do. About three weeks before Christmas, I asked Mr. Belcher about moving into housing owned by the Redevelopment Land Agency. He said he would check on that and get back in touch with me. He never did. So I called him about Christmas time and he didn't remember, didn't know what I was talking about.

7. The wrecking here is awful. There are no fences to protect children from the bricks and glass. Appliances, tubs and things are lying all around the area. In the vacant buildings, the apartment doors are open, and I am afraid for my children because of the strange people wandering around. In my building, in the empty apartments, men have gone through removing things from them.

8. I know of several families still here that are in bad trouble. Mrs. Lofton upstairs was promised a place by Mr. Belcher and never got one. She has a deaf child who must go to school nearby and so they cannot move out of the neighborhood. There are many situations like this at Sky Tower.

9. I have been looking on my own for a place, but have had no luck at all. I do not know what to do now.

10. This affidavit has been read and explained to me by a person working with the lawyers who are filing this lawsuit for the tenants. I understand that this affidavit will be used to support us in getting the government to stop the demolition, finish the renovation, and for anyone who has left, to pay relocation money, and generally to make sure that the government helps get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Lily P. Kornegay
LILY P. KORNEGAY

District of Columbia)
) ss
Washington, D.C.)

SUBSCRIBED AND SWORN TO before me this 19 day of Jan. 1975.

/s/ [Illegible]
Notary Public

My Commission Expires Oct. 14, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF ANNETTE RAINES

District of Columbia, ss:

1. I, Annette Raines, being duly sworn, do depose and say: I live at 1051 Whaler Place S.E. Apt. # 102, with my five children. My gross monthly income is $520.00 from part-time employment at the United States Patent Office. The rent for my four bedroom apartment is $98.00 per month.

2. Since I received notice that I would be forced to leave Sky Tower, I have been constantly looking for a place to go. I have been searching for months and can not find a suitable apartment. Most places don't want children, and there is nothing available that is larger than two bedrooms, and certainly nothing that I can afford. I have been forced to miss work without pay to look. With the demolition going on at Sky Tower, I am getting desperate. It frightens my children; there has been a lot of vandalism.

3. On about the first of December, a man came into my apartment with a list and told me that he was here to take out my refrigerator. Of course, I would not let him take it, but men have been removing everything from the vacant apartments in my building, ripping out bathtubs, appliances, things like that. I never know what is going to happen to me and my family next.

4. I liked living at Sky Tower before all of this trouble started and we were told to move. There were things wrong with my apartment that the management would not fix, but there is nowhere else I know of that I can

live in a four bedroom apartment, with air-conditioning, new floors, cabinets, things of that sort, for $98.00 a month.

5. These were good apartments. I still do not know why they are tearing them down, except that the same thing happened at Highpoint-Barnaby, and I hear people say that they are going to put up houses that cost 40,000 dollars over there.

6. This affidavit has been read and explained to me by a person working with the lawyers who are filing this lawsuit for the tenants. I understand that this affidavit will be used to support us in getting the government to stop the demolition, finish the renovation, and for anyone who has left, to pay relocation money, and generally to make sure that the government helps us get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Annette Raines
ANNETTE RAINES

District of Columbia)
) ss:
Washington, D.C.)

SUBSCRIBED AND SWORN TO before me this 19th day of January, 1975.

/s/ [Illegible]
Notary Public

My Commission Expires Oct. 14, 1979

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF GLORIA THOMAS

District of Columbia, ss:

I, Gloria Thomas, being duly sworn, do depose and say:

1. I work for United Planning Organization, 2737½ Martin Luther King Avenue, S.E., a community service organization, which has been funded by the Office of Economic Opportunity, and whose function is to provide services and assistance to residents of the Congress Heights area in the District of Columbia, which includes the Sky Tower Apartment complex. I live at 3427 Fifth Street, S.E., Apt. # 6. I have worked for UPO for six years and have had much contact with the tenants of Sky Tower, both before HUD took over the property and since that time, up to and including the present.

2. I have attended tenants' meetings and helped notify Sky Tower tenants of those meetings; I have had contact with Urban Management Services, Inc., when tenants' heat was off, or when they needed other maintenance.

3. Since the tenants first received notice from HUD that they must leave by November 1, I have spent a great deal of time working with those tenants in their efforts to get HUD to reconsider its position; for those tenants who were afraid to stay at Sky Tower because demolition was imminent, I have repeatedly attempted to get financial and other assistance for their moves. I remain in contact with many of those families who have left, both through personal contact and through my co-workers at UPO.

4. I have personally talked to almost every tenant who currently lives at Sky Tower Apartments and have compiled a list of those families, a copy of which is attached to this affidavit. Most of those families have repeatedly tried to get HUD to find relocation housing for them, and HUD has not done so. These are people who are in desperate living and financial situations.

5. Many of the former tenants that my co-workers and I have been talking to are now living in apartments that are in bad condition and where the rents are often twice what they were at Sky Tower Apartments.

6. From working with tenants who must be relocated, I know how difficult it is to find housing for low-income families, particularly those with large families.

/s/ Gloria J. Thomas
GLORIA THOMAS

SUBSCRIBED AND SWORN TO before me this 21st day of January 1975.

/s/ Louise B. Shelton
Notary Public
My commission expires
June 30, 1977

January 17, 1975

TENANTS STILL IN SKY TOWER APARTMENTS

NAME	ADDRESS	PHONE	
T. & E. Hicks	1022 Wahler Place #301	562-1553	(N.C.H.A.)
Gloria A. Halsey	1028 Wahler Place #103	561-1606	
Jean Proctor	1028 Wahler Place #201	None	(N.C.H.A.)
Catherine Scott	1028 Wahler Place #204	" "	(N.C.H.A.)
Rose Lofton	1028 Wahler Place #301	561-1884	
Sadie Cole	1034 Wahler Place #101	561-2732	
Beverly Montgomery	1034 Wahler Place #103	None	
Orlander Bell	1040 Wahler Place #103	" "	
Lucinda Cannon	1040 Wahler Place #204	562-9013	
Annette Rains	1051 Wahler Place #101	562-5647	
H. & W. Bryant	1051 Wahler Place #202	None	
H. & C. Gadson	1057 Wahler Place #101	561-7019	
Goldie Wiggins	1057 Wahler Place #102	None	
Della Morris	1064 Wahle. Place #302	" "	
Shirley Johnson	1064 Wahler Place #303	" "	(N.C.H.A.)
Armeather Jenkins	1064 Wahler Place #304	562-1869	
Lillie Kornegay	1070 Wahler Place #104	562-3582	
A. & D. Strong	1070 Wahler Place #204	None	
M. & F. Brown	1070 Wahler Place #304	562-7347	
L. & M. Whitney	1075 Wahler Place #201	None	
C. & A. Jackson	1075 Wahler Place #202	" "	

21 families still in Sky Tower. 30 families from Sky Tower have moved into the Congress Park Apartments. Other families have moved into other parts of the city, (Maryland and Virginia).

** No tenants rent is being subsidized.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT

District of Columbia, ss:

I, Cynthia Cole, being first duly sworn, do depose and say:

1. I formerly lived at 1034 Wahler Place, S.E. Washington, D.C., Apartment 301, with my five children and paid $98 per month for a three bedroom unit. I received a rent supplement at Sky Tower Apartments. I have lived at 1397 Congress Street, S.E., Apartment 202 since I left Sky Tower Apartments on November 11, 1974. My current rent is $165 a month for a three bedroom apartment, and I am not now receiving rent supplement monies. My only source of income is public assistance of $402 per month.

2. I received a notice on October 1, 1974 telling me that I had to move within thirty days.

3. I began looking for another apartment as soon as I received the thirty day notice. During the entire month of October I looked for another apartment, making bus trips to realty offices and calling people having ads in the newspapers. When I took the bus to look for apartments I had to take my four month old baby with me; my other children were in school during the day. Other people who were moving out of Sky Tower Apartments told me that they were able to find apartments at Congress Park, so I called the management people there. No person from the management or HUD contacted me first.

4. I would have liked to stay at the Sky Tower Apartments because my only income is public assistance and it is difficult to pay any more than the rent I was paying at Sky Tower.

5. My moving expenses, besides bus fares when I was looking for another apartment, included the rental of a truck for moving my things: the truck cost $75. I did not receive any moving money; I was told that I was ineligible.

6. This affidavit has been read and explained to me by a person working with the lawyer who is filing this lawsuit for the tenants. I understand my affidavit will be used to support us in getting the government to stop demolition, to finish the renovation, and, for any tenant who has left Sky Tower, to pay relocation money; and generally to make sure that the government helps us get decent places to live.

/s/ Cynthia Cole
CYNTHIA COLE

SUBSCRIBED AND SWORN TO before me this 22nd day of January 1975.

/s/ Louise B. Shelton
Notary Public

My commission expires June 30, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT

District of Columbia, ss:

I, Joyce Rice, being first duly sworn, do depose and say:

1. I was formerly a resident of Sky Tower Apartments. I move to Congress Park Apartments, 1389 Congress Street, S.E. Washington, D.C., Apartment 201 before Thanksgiving.

2. At Sky Tower, I had a six bedroom apartment for a rent of $184 a month. Now, I only have four bedrooms and pay $185 a month rent. Beside my husband and myself, our five children live with us. Our income is about $500 a month. My husband has a job at Ste. Elizabeth's.

3. When we heard that we must move, we looked for a house to move into, but everything was much too expensive. We had always paid our rent, and H.U.D. directed us to our present apartment. Although we moved before Thanksgiving, it was after Christmas before we received $300 for moving expenses. The cost of moving for us included $100 for a truck.

4. The apartment we had at Sky Tower was very nice. We liked it up there. If Sky Tower were put back in the shape it was in when we had to move, we would indeed move back. We prefer the greater space we had at Sky Tower, six bedrooms instead of four bedrooms for the seven of us, and the low rent charged.

5. This affidavit has been read and explained to me by a person working with the lawyer who is filing this

lawsuit for the tenants. I understand that my affidavit will be used to support the past and present tenants is getting the government to stop the demolition, to finish the renovation, to pay relocation money to those who have moved and will be moving; and generally to make sure that the government helps us all to get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Joyce Rice
JOYCE RICE

SUBSCRIBED AND SWORN TO before me this 22nd day of January 1975.

/s/ Louise B. Shelton
Notary Public

My commission expires June 30, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT

District of Columbia, ss:

I, Grace Gray, being first duly sworn, do depose and say:

1. I formerly lived at 1075 Wahler Place, S.E. Washington, D.C., Apartment 302, in a four bedroom apartment and paid $127 a month. I had a rent supplement. I have lived at 1389 Congress Street, S.E., Apartment 301 since I left Sky Tower Apartments on November 11, 1974. Presently I pay $185 a month for a four bedroom apartment. I am on public assistance and get $593 a month for myself and my seven children.

2. When I got my notice that they were going to tear down Sky Tower, I started to look for a new place to live. It was very hard to find a place for all of us. I hadn't paid my rent in October and November because I was saving up money to move to a new apartment. I contacted Mr. Belson, from H.U.D. I think, for help. He said that there were some places in Congress Park Apartments which were being saved for people who were being moved out of Sky Tower, but only those who had paid all the rent. I used the money I had saved up, and filled out a paper saying that my rent was current and that I left the apartment in good condition. Mr. Belcher, from H.U.D. I think, then gave me the name of Ms. Green who runs Congress Park, and I moved in. I don't get any rent supplement now.

3. It cost me lots of money for moving. I hired a U-Haul for about $40 and paid the back-rent money of

$229. I got $300 for moving expenses on January 3, 1975.

4. I like it here but Sky Tower was also very nice. Sky Tower was a lot less money for rent. I would move back to Sky Tower in a minute if they would stop tearing down the buildings.

5. I went to a tenant meeting at H.U.D. when this all just began. Mr. Belcher and Mr. Ken Long, from H.U.D. I think, were there. We tried to get them to reconsider the plan to tear down the buildings. We wanted them to finish the project and not to evict the people who live there.

6. This affidavit has been read and explained to me by a person working with the lawyer who is filing this lawsuit for the tenants. I understand that my affidavit will be used to support us in getting the government to stop the demolition, to finish the renovation, and for any tenant who has left Sky Tower, to pay relocation money; and generally to make sure that the government helps us get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Grace Gray
GRACE GRAY

SUBSCRIBED AND SWORN TO before me this 23rd day of January 1975.

/s/ Ruth L. VonKenbard
Notary Public

My Commission expires July 1, 1978

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

SECOND AFFIDAVIT OF DONALD F. HUMPHREY

District of Columbia, ss:

I, Donald F. Humphrey, being duly sworn do depose and say:

* * * *

5. In my considered judgment, and in the judgment of the entire Board of Directors of HDC, the Sky Tower complex was uniquely appropriate for rehabilitation.

The decision to propose a modification of the number and type of units comprising the Sky Tower complex, in addition to rehabilitation, was made in response to the fact that the most urgent low-income housing need within the District was, and continues to be, for apartment units capable of housing large families: The Housing Development Corporation is committed to providing housing for low-income families within the District. In the considered judgment of the HDC Board of Directors, based upon the experience of HDC in District of Columbia housing, the need for low-income, large family apartments within the District was, in 1968, and continues to be, dramatically greater than the need for small family units. This need was particularly great in the Southeast section of the District. Because of the arrangement of the smaller units within the Sky Tower buildings and the nature of the infrastructure, HDC concluded that the conversion of smaller units into large family apartments could be achieved with relative ease.

6. On the basis of the foregoing considerations, HDC determined to propose to HUD that HDC act as nonprofit sponsor for the complete rehabilitation of the Sky

Tower complex, together with its restructuring to accommodate large families, under the Section 236 program of the National Housing Act, as amended, with a rent supplement contract (attached as Exhibit A to this Affidavit).

The Considerations Which Prompted HUD to Accept the HDC Proposal

7. Following HDC's submission to HUD of an initial feasibility-stage proposal for the rehabilitation of the Sky Tower complex, I participated with HUD and FHA architects and appraisers in two of three inspections of the Sky Tower property in order to determine the precise condition of the project and its needs for rehabilitation. Among the inspecting group, there was general agreement that Sky Tower could be readily rehabilitated. There was also complete concurrence among those participating in this lengthy investigation of the Sky Tower complex that the proposed increase in the number of large family units was desirable. The agreement as to this aspect of the proposed rehabilitation is reflected in the very first recommendation contained in the December 17, 1968 memo from R. B. Glennon to Mr. Ralph Cooper (attached as Exhibit B to this Affidavit). This memo also contains 37 specific recommendations as to the precise rehabilitative work necessary and sufficient to restore Sky Tower. All who participated in the examination of the property concurred in these recomemndations.

8. The concurrence of HUD in the proposed restructuring of Sky Tower to include larger apartment units was further indicated in a letter to HDC from Albert Miller, Director of the HUD Area Office, dated September 19, 1969.

Anacostia No. One, Inc. ("ANO") was formed on April 27, 1970, by HDC for the express purpose of acting as the sponsor for the rehabilitation of the Sky Tower Apartments. HDC maintained control of Anacostia No. One's Board of Directors, with the intent of turning control of the Board over to a community group upon completion of the rehabilitation.

* * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF ANN M. MEISTER

I, Ann M. Meister, being duly sworn, do depose and say:

I am currently a second-year student at Antioch School of Law working under the supervision of Florence Roisman, Esquire. In an attempt to discern the feelings of former tenants about returning to Sky Tower, I prepared the attached questionnaire. I contacted 20 tenants who have moved to Congress Park Apartments. Out of the 20, six signed the questionnaire, indicating their willingness to return.

There were several common areas of concern in relation to the facilities at Sky Tower:

1. increased security;
2. improved maintenance;
3. provision of recreational facilities for the children; and
4. arrangements for termination of yearly leases without charge at Congress Park should they move prior to expiration of the lease.

These factors, along with the great inconvenience of moving again and fear that Sky Tower would eventually be torn down, were frequently cited by other former tenants as the reasons for wishing to remain at Congress Park.

In addition to the questionnaires obtained from former residents who currently live at Congress Park, I contacted some former tenants who have moved to even less favorable housing conditions. As a result of phone conversations, I filled out questionnaires indicating their responses.* These questionnaires are also attached.

Also, I have knowledge of several other former tenants who have indicated their willingness to return to Sky Tower, namely:

1. Rose Mae Harkless
   1122 Kennebeck Street, Maryland
   (formerly at 1057 Wahler Place, S.E. #201)
2. Collis Greeke
   2657 Stanton Road #210
   (formerly at 1070 Wahler Place, S.E. #103)
3. Mary Davis
   1397 Congress Street, S.E. #101
   (formerly of 1057 Wahler Place, S.E. #101
   and before that at Highpoint-Barnaby)

Ms. Greeke, who was living in an apartment in an unrehabilitated building, was forced to move when her child contracted meningitis, which was diagnosed as resulting from the conditions of the unrehabilitated living quarters at Wahler Place.

Aside from contacting former tenants, I spoke with most of the tenants who still remain at Sky Tower Apartments. All of the present tenants contacted, without exception, wished to remain (questionnaires attached, and I have spoken to others by telephone).

Within the last few days, I have received telephone inquiries from several people who were not former tenants

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* The small number of former tenants contacted who do not live in Congress Park is due to the difficulty of ascertaining their whereabouts except by word of mouth.

but who need a place to live and are interested in moving into Sky Tower Apartments.

/s/ Ann M. Meister
ANN M. MEISTER

SUBSCRIBED AND SWORN TO before me this 6th day of February 1975.

/s/ [Illegible]
Notary Public

My Commission Expires Aug. 14, 1979

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF LAWRENCE JOSEPH DONOVAN, JR.

I, Lawrence Joseph Donovan, Jr., being duly sworn, do depose and say:

I am a law student at Antioch School of Law assisting Counsel for the Plaintiffs. Between January 29 and February 6, 1975 I contacted, by telephone, the management of numerous federally-assisted housing projects in the Washington area (all but three in southeast Washington). I talked with thirteen managers or agents, who handled a total of seventeen different developments. The majority of the managers indicated that they did not maintain a waiting list and only accepted applications when there was a vacancy. One agent in this group maintaining no waiting list indicated that they received approximately ten unsolicited calls per day from people seeking apartments having two or more bedrooms.

Two of the managers indicated that they had vacancies at the time, and each had numerous applicants for the vacant apartments.

Mr. Charles Whitted, manager of the Linda Pollin Memorial Apartments, indicated that he maintained a waiting list, with a two month wait for two bedroom apartments and at least an eight month wait for the three and four bedroom apartments. The average length of occupancy for the three and four bedroom apartments was six years.

The manager for Sursum Corda Apartments, Mrs. Thomas, said that they had a waiting list of about 1000

families, including names of some people who had originally applied at the beginning of the project in 1969. The list of apartments contacted includes:

Sayles Place Homes
Valley Wind
Trenton Terrace Apartments
Langston Lane Apartments
Stoneridge Apartments
Parkway Overlook
Brentwood Village
Foster House Apartments
Anacostia Gardens
Park Southern Apartments
Linda Pollin Memorial Apartments
Parkchester Housing Co-op
Hartford Park Apartments
Sursum Corda

DISTRICT OF COLUMBIA)
) S.S.:
WASHINGTON, D.C.)

/s/ Lawrence Joseph Donovan, Jr.
LAWRENCE JOSEPH DONOVAN, JR.

SUBSCRIBED AND SWORN TO before me this 6th day of February 1975.

/s/ [Illegible]
Notary Public

My Commission Expires Oct. 14, 1979

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF HARRY W. STALLER

I, Harry W. Staller, on oath state that I am the Director for the Area Office of the Department of Housing and Urban Development, Washington, D.C., and that I am acquainted with the decision made to demolish and raze the HUD-owned project known as Skytower Apartments, located at Wahler Place, S.E., Washington, D.C., and that to the best of my knowledge and belief:

1. The Secretary acquired the project by Trustee's Deed on June 15, 1973.

2. During the period commencing approximately August 28, 1973, the Director of Housing Management, the Chief, Property Operations Branch (CPO), and other members of my staff engaged in protracted and detailed studies to determine what course of action with respect to Skytower would best discharge the Secretary's duty within the contemplation of 12 USC 1713(1), which authorizes activity with respect to Secretary-acquired housing for the protection of the mortgage insurance fund.

a. The studies sought to determine whether or not the existing unit composition which produced a high density environment, could be financially successful and provide decent housing and a suitable living environment for large families of low and moderate income, as was originally intended.

b. Initially, it became apparent from these studies that the high density problem was compounded by the proximity of the buildings to each other, leaving virtually no area that could be useful for recrea-

tion. (Our scaled map indicates the proximity to be from 20′ to 30′).

3. Under my general direction, these extensive studies were continued to determine the best use of the project in an "as is" condition, and under a variety of alternative proposals consistent with the area. The proposals offered included consideration of the statutory and regulatory parameters of Section 236 of the National Housing Act, as amended.

4. Five alternate proposals were settled upon as being within the parameters of Section 207(*1*), of the National Housing Act, as amended. Four of these proposals were determined to be not viable, and the fifth, which was to demolish the project, and return the land to a use consistent with the proposed zoning of the area by the District of Columbia, was chosen.

5. Upon due deliberation and examination of the facts gathered, and analyzed by this office, I found a sound, reasonable and rational basis for demolishing the project, and disposing of the vacant land by public offering.

a. This decision, in my view, provided the most economical, feasible and environmentally sound means of providing the area with low density, low income housing that meets with the city's objectives in its master plan (Washington's Far Southeast '70).

b. Departmental studies concluded that the cost of rehabiiitation under the alternative plans we had considered would be excessive, and would be nonproductive as an effort to make this excessively blighted area a safe and decent place for low income families.

c. In my view, the four other alternatives suggested for disposing of the project could not outweigh the proper interest of the Secretary in placing the property in a condition which afforded the most reasonable expectation of accomplishing the goal of providing the residents of the area with a decent environment and safe living conditions, which dictated the removal of this ill-conceived project. Each of the four other alternatives entailed reten-

tion of all or part of the improvements in rehabilitated condition, but the area's prevailing vandalism, the soaring crime rate, its juvenile delinquency, the high project density, and the area's propensity toward large matriarchal families with an escalating school population were factors likely to cover the project to revert to its presently unhabitable state.

6. In reaching my decision, it was determined that each eligible tenant be paid the costs of out of pocket moving expenses, with eligible tenants to be given the last month rent free in order to have sufficient monies to pay security deposits for rental at new locations.

/s/ Harry W. Staller
HARRY W. STALLER

Subscribed and sworn to before me this 20th day of March, 1975.

/s/ Vivian D. McCrimmon
VIVIAN D. MCCRIMMON
Notary Public
for the District of Columbia
City of Washington

My Commission Expires Jan. 31, 1976

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT

District of Columbia, ss:

I, Mary A. Cole, being first duly sworn, do depose and say:

1. I formerly lived at 1034 Wahler Place, S.E., Washington, D.C., Apartment 102, in a four bedroom apartment with two bathrooms and paid $48.00 a month, I lived there with my son, daughter and grandson. This was National Capitol Housing.

2. In October of 1974, someone from National Capitol Housing called me and told me that I would have to move out. They found me the place that we are living now and moved us at their expense. Presently I live with my daughter, son and grandson at 740 Atlantic Street, S.E. in an apartment with three bedrooms and one bath. The rent here is $38.00 a month, which is less than at Sky Tower, but I think that this is because my son turned 18 and is no longer getting Social Security and so our rent went down. This is also National Capitol Housing.

3. I really hate it where we are living now. Lots of things are wrong. Four windows on the ground floor don't work right; three don't open at all. There are no screens on any of the windows. I have asked the management for screens, but they tell me that they won't be put in until June. There are lots of roaches. National Capitol Housing sent an exterminator in November, but that didn't help. This is a very bad neighborhood. There are many robberies and the woman next door was murdered in her apartment. Now, the building next door is boarded

up because of her murder. Several other buildings on this street are also boarded. Behind my apartment, there is some sort of courtyard, with a concrete structure which I think is supposed to be a sandbox but it is full of trash and glass. The police are always around here because something or other has happened.

4. Living where I am now, I am also generally farther away from essential services than I was before. At Sky Tower, there was a washing machine in the building. Here there is none, and I have to wash clothes by hand. Also, at Sky Tower, the Giant Food Store was only one block away, and here I have to walk about one mile to the food store, up and down hills, which is bad for my health. The clothing stores are even farther away, in Eastover Shopping Center in Maryland.

5. I loved it at Sky Tower. My daughters each had apartments in the same building and now we are separated. The apartment was great. If anything was wrong, it was fixed right away. I really need three bedrooms with the number of people in my family, but I want to move back so much that I would take a two bedroom at Sky Tower if that was all that I could get.

6. This affidavit has been read and explained to me by a person working with the lawyer who is filing this lawsuit for the tenants. I understand that my affidavit will be used to support us in getting the government to stop the demolition, to finish the renovation, and for any tenant who has left Sky Tower, to pay relocation money; and generally to make sure that the government helps us to get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Mary A. Cole
MARY A. COLE

SUBSCRIBED AND SWORN TO before this 5th day of May 1975.

/s/ Louise B. Shelton
Notary Public
My commission expires
June 30, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT

District of Columbia, ss:

I, Sadie E. Cole, being first duly sworn, do depose and say:

1. I formerly lived at 1034 Wahier Place, S.E., Washington, D. C., Apartment 101, in a two bedroom apartment and paid $84 a month. I had a rent supplement. I had been living at Sky Tower since 1969 and moved to my present apartment in December, 1974. Presently, I live at 3424 21st Street, S.E., Washington, D. C., Apartment 201 and pay $165 for a two bedroom apartment. I am on public assistance and receive $243 a month for myself and my two children.

2. My present apartment is much smaller than the one I had at Sky Tower. I have much less cabinet space, a smaller refrigerator and stove. At Sky Tower I had a good size dining room, but now I can barely fit in a table in my dining space.

3. Living at Sky Tower was extremely convenient for me since my mother and sister each had apartments there. I also had many friends living at Sky Tower. Since I have moved it has been difficult for me to see both my friends and family.

4. In my present apartment I have no lock on the mailbox. As a result, I have to go to the post office every day to get my mail, which costs 80¢ per day in bus fare. This also causes delay in receiving my mail. As a result of not receiving my public assistance check promptly, I have not been able to pay my rent on time and therefore have

been charged with a $10 late fee for the months of April and May.

5. In addition, I have no screens on my windows. When I asked to have them fixed, I was told to buy the screens and do it myself, which I cannot afford to do.

6. I have constantly complained to the management about the broken mailbox and the fact that there are no screens on the windows, but nothing has been done. I have withheld my rent for the months of April and May in order to get something done. I have the full amount of rent for these monts, but I do not want to pay the rent until my mailbox and screens are fixed. These problems cause me great hardship because of the expense involved.

7. I very much want to move back to Sky Tower as soon as possible. I liked living there and cannot afford to pay $165 in rent a month, plus a late charge of $10, and 80¢ a day to pick up my mail, with a public assistance check of $243 a month.

8. I have called Mr. Belcher at HUD a few times in the month of April and twice since the beginning of May, about trying to move back to Sky Tower, but at present he cannot say when I will be able to move back. I desperately need to move back to Sky Tower because it was a nice place to live plus offered a rent that I could afford.

9. This affidavit has been read and explained to me by a person working with the lawyer who is filing this lawsuit for the tenants. I understand that my affidavit will be used to support us in getting the government to stop the demolition, to finish the renovation, and for any tenant who has left Sky Tower, to pay relocation money; and generally to make sure that the government helps us get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Sadie E. Cole
SADIE E. COLE

SUBSCRIBED AND SWORN TO before this 5th day of May 1975.

/s/ Louise B. Shelton
Notary Public
My commission expires
June 30, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT

District of Columbia, ss:

I, Dolores Jordan, being first duly sworn, do depose and say:

1. I live at 3849 - 9th Street S.E. in a three bedroom apartment which I sublease from National Capital Housing Authority for $36. per month plus about $54. monthly for utilities. Before moving here I lived at 1022 Wahler Pl. S.E., Apt. 202, in a four bedroom apartment. I subleased that apartment from N.C.H.A. for $130. per month including utilities. While I was living at Sky Tower my rent was based on my husband's salary which was approximately $650. per month. My husband and I have separated and my total income for myself and my five children is now $220. each month.

2. I am very unhappy with our current living situation, and I want very much to return to Sky Tower. Our present apartment is much smaller than the one on Wahler Pl. My four daughters, ages 14, 13, 11, 10, must share one bedroom. There is hardly enough space for the two single beds and two chests which they must share. They have only one small closet. At Wahler Pl. only two of the girls had to share a room and each girl had her own bed and closet. My son's room is also much smaller than it was at Sky Tower. When we moved, I had to give away a complete bedroom suit—two beds, a chest of drawers, a dresser, a nightstand, a chair, and two lamps—because there just wasn't enough room.

The stove and freezer are much smaller than the ones on Wahler Pl. and we have a serious problem with mice and roaches that we did not have at Sky Tower.

I lived at Sky Tower for eight years before we had to move and there was a strong sense of community in the buildings there that I don't feel here. The people in 1022 Wahler Pl. were concerned about each other and would watch-out for one another's children. There were also more activities for the children at Sky Tower which everyone worked together to organize.

3. This affidavit has been read and explained to me by a person working with the lawyer who is filing this lawsuit for the tenants. I understand that my affidavit will be used to support us in getting the government to stop the demolition, to finish the renovation, to pay relocation money for any tenant who has left Sky Tower, and generally to make sure that the government helps us get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Ms. Dolores Jordan
DOLORES JORDAN

SUBSCRIBED AND SWORN TO BEFORE ME THIS 8th day of May 1975.

/s/ Louise B. Shelton
Notary Public
My commission expires
June 30, 1977

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT

District of Columbia, ss:

I, Jean Fisher, being first duly sworn, do depose and say:

1. I formerly lived at 1028 Wahler Place, S.E., Washington, D.C., Apartment 203, in a two bedroom apartment and paid $84.00 a month. I had a rent supplement. I have lived at 4374 7th Street, S.E., Washington, D.C., Apartment 302 since I left Sky Tower in December 1974. Presently I pay $189.50 a month for a two bedroom apartment. I get no rent supplement. I am on public assistance and get $243.00 a month for myself and my two children. This is my only income.

2. I want very much to move back to Sky Tower, but I have heard nothing from HUD since I moved out last December. I do not know how to go about getting back.

3. When I got my notice that they were going to tear down Sky Tower, I started to look for a new place to live. No one gave me any help. It was very hard to find a place and I had to settle for one that I couldn't afford. Public Assistance paid for moving costs, but I had to put down $189.50 security deposit out of my own money.

4. Due to the high rent here, I have fallen behind in my payments. I now owe for April and May 1975. I went to court on April 30th and the judge gave me until May 5th to pay $202.00 dollars, consisting of the April rent, a $10.00 late fee and court costs, I think. He gave me until May 31st to pay May's rent, another $189.50. On May 5th, I only had $145.00. I didn't go down to the

rental office, since I was afraid that they would demand the whole amount. Now I am afraid that I will be evicted any day since I was told that if I didn't comply with the judge's order, they didn't have to send me another notice, but could have me out immediately. Even if I could pay all the money that I owe now by May 31st, I don't know how I could pay the June rent, which I would have to pay by June 10th.

5. Conditions here are bad too. There is always something wrong. Water pressure is bad and leaks are common. There are mice. It is hard to get the management to do anything when things are wrong. The apartment certainly is not worth the high rent.

6. I am also farther away from services here. At Sky Tower there was a washing machine in the building. Here I have to go out to a laundromat, seven or eight blocks away. The food, drug and clothing stores are also seven or eight blocks away. I usually walk down and hope to get a ride home. At Sky Tower, the food store was a block away.

7. The most urgent reason that I need to get back to Sky Tower is financial. I can not afford to pay more than $84.00 a month, and I can not find another place to live that is that inexpensive. Now I am afraid that my family will soon be on the street if we can not move back to Sky Tower.

8. This affidavit has been read and explained to me by a person working with the lawyer who is filing this lawsuit for the tenants. I understand that my affidavit will be used to support us in getting the government to stop the demolition, to finish the renovation, and for any tenant who has left Sky Tower, to pay relocation money; and generally to make sure that the government help us get decent places to live, if not at Sky Tower, then elsewhere.

/s/ Jean Fisher
JEAN FISHER

SUBSCRIBED AND SWORN TO before this 8th day of May 1975.

/s/ David J. Haggarty
Notary Public
My commission expires
[Illegible]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAIVT OF HARRY W. STALLER

Harry W. Staller, first being duly sworn, deposes and says:

1. This affidavit is submitted for purposes of supplementing my first affidavit dated March 27, 1975, and relating the further consideration that I have given to alternative disposition proposals for the Skytower Apartments project.

2. During the spring of 1974, members of the Area Office staff evaluated alternative disposition proposals for the Skytower Apartments which included a reduction in density of the units and the utilization of a range of subsidy assistance plans pursuant to the Section 236 and the rent supplement programs. These alternatives were judged to be economically unfeasible and environmentally and sociologically unacceptable.

3. As described in my previous affidavit, other alternatives to demolition were also studied, but were finally rejected for similar reasons. The decision to demolish existing housing is a painful one, given the state of the housing stock in the District of Columbia, and the decision in this case was made only after careful review of the needs of the community and the tenants, and of the Department's obligation under the National Housing Act to act in the interests of the insurance funds in disposing of HUD acquired properties.

4. My office has continued to investigate possible alternatives to demolition of the remaining units at Skytower. There is no indication from any source that any prospective sponsor or developer would accept conveyance

of the property as is, even were HUD to give the property away. Discussions with representatives of the District of Columbia indicate that they would accept conveyance on the condition that HUD totally rehabilitates the units and provides adequate subsidies to pay for operating expenses. A similar offer from Mr. Donald Humphrey, Acting President of the Housing Development Corporation, has been communicated to us through plaintiffs' attorney. That offer is embodied in letters dated January 31, 1975, and February 24, 1975, which are attached hereto and incorporated herein as Exhibits I and II. Mr. Humphrey, apparently aware of the tenuous possibilities for success of this project, imposes rather stiff conditions upon acceptance of HUD's gift. The quality of rehabilitation "must" meet high standards, the "billy goat walk" from Valley Green Apartments "must" be removed, an on-site human resource development program "must be provided, an on-site combination day care medical facility "shall" be supported, a construction training grant "shall" be implemented, and landscaped pocket parks "will" be designed and maintenance funds provided.

5. Nevertheless, my office has calculated the cost of a limited option involving rehabilitation of the existing units and the provision of an operating subsidy assuming no debt service requirements. These figures do not include expenditures for social services and physical amenities which Mr. Humphrey found to be necessary for successful operation of the project. They also do not include an allowance for the expenses caused by excess vandalism.

The cost of rehabilitation of the two non-rehabilitated buildings and the upgrading of code standards of the eight already rehabilitated buildings (77 units) would be $535,000.00. The cost of upgrading the eight previously rehabilitated buildings (63 units) to code standards and demolition of the two non-rehabilitated buildings would be $139,000. The operating expenses per annum including security, salaries, taxes, electricity and fuel, water, administration and miscellaneous expenses (e.g. trash, extermination) totals $173,635.00 for the

ten building project and $147,065.00 for the eight building project.

The income which the project would generate is difficult to calculate because present rents may not reflect what plaintiffs are able to pay. However, assuming that they pay rents at the highest level of the range currently charged, i.e., $134.00 for a two bedroom, $165.00 for a three bedroom, $184.00 for a four bedroom, $140.00 for a five bedroom and $200.00 for a six bedroom apartment, the effective gross income (at 93% occupancy) would be $119,170 for the ten building project and $97,566 for an eight building project.

The estimated annual operating subsidy would therefore be $54,465 for the ten building project and $49,499 for the eight building project. This subsidy would not cover any expenses required for additional services or maintenance expenses required for recreational facilities described by Mr. Humphrey, repairs required because of excess vandalism, or other unexpected problems or expenses.

6. It also has been suggested that on similar terms, ownership of the project be conveyed at no cost to a cooperative owned by the tenants. This variation would be impractical. My experience with the cooperative form of ownership indicates that even in projects with moderate and upper income owners, the problems of management are extremely difficult and complex, particularly in the absence of a pool of emergency capital. The difficulties of operating Skytowers as a cooperative would be insurmountable for low income tenants.

7. Questions of legal authority and availability of funds aside, this option or any variation defeats the objective of reducing densities and encouraging homeownership opportunities in that area of Anacostia. To continue to merely provide "shelter" for large welfare families would be detrimental to the surrounding community, as observed in the "Washington's Far Southeast 70 Plan." The proposal by Mr. John J. Simons for construction of moderate income town houses on the project site when combined with the Highpoint Banarby property rep-

resents desirable development for this area, and the continued existence of the Skytower Apartments project jeopardizes the feasibility of a separate Highpoint Barnaby development. Nothing in this proposal for moderate income development on the Skytower site contradicts the formal plans of the District of Columbia for the long term development of the area. Indeed, demolition of Skytowers would further those plans.

8. HUD cannot ignore the problem of legal authority and availability of funds. The disposition powers provided by Section 207(*1*) of the National Housing Act must be exercised for the protection of the interests of the insurance funds. Moreover, HUD has no subsidy program which as presently administered would permit a commitment of operating subsidy funds for this project.

9. My recommendation for disposition of the Skytowers project is to demolish the remaining buildings located on the site. No tenant will be forced to move from the project until my office can find decent housing at prices they can afford. The relocation benefits described in my previous affidavit will also be provided. In this way, I believe we best serve the interests of the community, and the obligations of the National Housing Act, while minimizing the inconvenience to tenants.

/s/ Harry W. Staller
HARRY W. STALLER

Subscribed and sworn to before me this 14th day of May 1975.

/s/ Vivian D. McCrimmon
Notary Public

My Commission Expires Jan. 31, 1976

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

JAMES T. LYNN, ET AL., DEFENDANTS

AFFIDAVIT OF LINDA MILLER

I, Linda Miller, being duly sworn, do depose and say:

1. I am a law student employed by Florence Wagman Roisman, counsel for plaintiffs in this case.

2. Subsequent to the status hearing of March 3, 1975 Ms. Roisman asked me to work with the HUD representative, William Belcher, to facilitate compliance with this Court's order of preliminary injunction.

3. Since that time, Mr. Belcher and I have had telephone conversations at least once a week; I have sent Mr. Belcher information as we receive it, on former tenants and have requested his assistance with a number of daily problems that arise at Sky Tower.

4. HUD has a list of the names of 18 former tenants, most of which I supplied to Mr. Belcher, who are anxious to return to Sky Tower.

5. HUD does not have addresses for approximately 22 families who lived at Sky Tower on September 17, 1974, because Mr. Belcher told me that either they left with no forwarding address or they were tenants of NCHA, and HUD had no obligation to locate them.

6. There were 14 families who had leased units at Sky Tower from NCHA. I have been able to contact four of those tenants, all of whom wish to return to Sky Tower. HUD now has that information.

7. The remaining 10 NCHA families have not been contacted, and I have not been able to get addresses for those families.

8. Mr. Belcher told me that all HUD can do is request NCHA to agree to release those 20 units originally set aside. He stated that it was NCHA's responsibility to locate and ascertain whether these families wish to return.

9. Of the 55 families who left Sky Tower subsequent to September 17, 1974, there are approximately 21 families who desire to return. (I have, in the past several weeks, supplied Mr. Belcher with several more names.)

10. Of the remaining 34 families, approximately 22 have not been contacted to determine their desire to return, which means that only 22 families do not wish or are not able to come back to Sky Tower.

11. I have received more than a dozen telephone calls from people who have heard of the Court's order preserving the Sky Tower apartments and want to move there. Although they never lived at Sky Tower, the poor conditions and high rent at their present apartments have forced them to seek alternative housing. They have asked me to put their names on "the waiting list." I have explained the Court's order and have given Mr. Belcher that information.

12. Many of the families who are not willing to return have expressed regret to me at their decision. The people to whom I have spoken have stated that the main reason is their uncertainty about the future of Sky Tower and their fear at having to be dislocated once again.

/s/ Linda Miller
LINDA MILLER

SUBSCRIBED AND SWORN TO before me this 16th day of May 1975.

/s/ [Illegible]
Notary Public

My Commission Expires Aug. 14, 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

CARLA A. HILLS, ET AL., DEFENDANTS

MEMORANDUM AND ORDER

This class action was brought on behalf of the former tenants of a low-income, multi-family housing project which the Secretary of the Department of Housing and Urban Development decided to tear down. The facts are summarized in this Court's Findings of Fact and Conclusions of Law filed February 7, 1975 granting a preliminary injunction halting further demolition and permitting the tenants to return. *Cole* v. *Lynn*, 389 F. Supp. 99 (D.D.C. 1975). The Government now moves to dismiss, or in the alternative for summary judgment, on the grounds that the Secretary's decision to demolish the project was a proper exercise of discretion. The defendants also seek to be relieved from certain portions of the Court's preliminary injunction.

Defendants now attempt to justify as a proper exercise of discretion the Secretary's decision to demolish the project by arguing that the Secretary may not seek to preserve "housing for housing's sake" but must also give weight to his statutory duty to "eliminate blight." (Defendant's Memorandum in Support of Motion to Dismiss, 8-10). They argue that the project had become "blighted, vandalized, unattractive and unsafe" and that the area needed to be "revitalized" by the construction of single-family dwellings in accordance with the District of Columbia Government's master plan.*

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* Of course, plaintiffs take issue on the factual level with these assertions, claiming the project's decline is attributable to HUD's mismanagement after taking it over.

This argument, which makes explicit attitudes which were implicit in the contemporaneous decision documents, demonstrates that the Secretary has confused his role in slum clearance with his role in housing. Where Congress provided for slum clearance or urban renewal programs, that is the destruction of housing which is "serving an undisputed housing need," *Cole* v. *Lynn*, *supra*, at 102, in the service of civic betterment, it required that at least as many low- and moderate-income housing units be created by the plan as are destroyed, unless the Secretary certifies that there is already a surplus of such housing in the area. 42 U.S.C. § 1455(h). Because there is an acute housing shortage in the Washington area, the Secretary's decision to destroy this project, for what are now admitted to have been in part aesthetic reasons, has resulted in many of the tenants being forced into even more intolerable conditions.* To the extent the Secretary believed he could destroy this project on the grounds it had become a vertical slum without first determining that there was available in the area affordable replacement housing in comparable or better condition, not only for the individual tenants but for their economic class as a whole, he acted in derogation of the statutory scheme.

This error was frankly acknowledged in oral argument when defendants' counsel maintained that although the project may appear to be serving a housing need in the city as a whole, when it is "dissected microscopically from the larger body" it can be seen to be "a blight." This kind of tunnel vision, which evalautes a project against the ideal of "safe, sanitary, decent" housing rather

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* For example, the affidavit of one tenant who paid $84.00 per month for a two-bedroom apartment at Sky Tower indicates she has been paying $189.50 a month, out of a total income of $234.00 in welfare she receives monthly for herself and her two children, for a two-bedroom apartment elsewhere. Other affidavits reveal comparable situations.

Even the former Sky Tower tenants who have been lucky in that they were able to secure subsidized housing with the National Capital Housing Authority did so only by excluding others on the 7,500-family waiting list.

than in relation to the practical alternatives available, is capricious and arbitrary.

The second ground advanced to defend the Secretary's decision is that he made a sound "business decision" in light of the prior history of the project. The Court has already held, *Cole* v. *Lynn*, *supra*, that the Secretary's decision was infected with several errors of statutory construction and, after re-examination, the Court adheres to its earlier holdings. Furthermore, there are disputed factual issues as to what factors actually influenced the Secretary's decision and in what degree.*

According to the most recent estimates by HUD, upgrading the eight previously rehabilitated buildings containing 63 units to the standards of the housing code, and tearing down the two still standing which have not been rehabilitated, would cost only $139,000. (Staller Affidavit, May 14, 1975). Such expenditures are specifically permitted under § 207(*1*) of the National Housing Act, 12 U.S.C. § 1713(*1*). Congress contemplated that the Special Risk Insurance Fund would operate at a loss to be covered by appropriations. H.R. Rep. No. 1585, 90th Cong., 2d Sess. 13-14 (1968). Unless there is a rational basis to believe more comparable units of housing can be provided by using the $139,000 to insure additional mortgages for new construction than by rehabilitating 63 existing units, the Secretary's "business decision" is unsound. The record indicates no such comparative analysis by HUD.

In enacting 42 U.S.C. § 1441a(b) and (c) in August, 1974, Congress specifically found that HUD had "not directed sufficient attention and resources to the preservation of existing housing" and mandated a "greater effort" in that direction. There has been no showing that HUD's Property Disposition Handbook for Multifamily Prop-

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* For example, it appeared to the Court from the documents submitted earlier that the alternative, proposed by the staff, of retaining only the rehabilitated buildings was rejected because it was thought they shared heating systems with buildings which were to be torn down. The Government now admits this is not true, but claims the mistake "played no significant role in the decision to demolish." Such factual issues must await resolution at trial.

erties, HM 4315.1 (Feb. 17, 1971), the operative source for staff decisions in this area, was changed in any way to reflect this explicit direction by Congress to concentrate more effort on saving existing housing. Moreover, HUD's analysts stopped with the conclusion that the project could not be operated profitably at fair market rents without an operating subsidy. Section 8(c)(1) of Pub. L. 93-383, enacted August 22, 1974, a month before the final decision to demolish this project was made, specifically changed the law to provide that the Secretary might pay rent subsidies to individual tenants up to 20 percent in excess of fair market rentals. The conclusion that the project could not be operated was not, so far as this record shows, re-examined in the light of these new resources, nor has HUD seen fit to do so during the course of this litigation.

The motion to dismiss will be denied, every indication in the record to date being that the Secretary's discretion has not been exercised in a rational manner.

In addition, the defendants ask to be relieved from paragraphs 5 and 6 of the Court's Order of Preliminary Injunction filed February 7, 1975. These require the Secretary to "restore with reasonable diligence each of the units and common areas in the eight rehabilitated buildings to a condition at least as decent, safe and sanitary as that existing as of September 17, 1974," the date of the decision to demolish, and to permit any tenant family which desired to do so to return to Sky Tower under the terms of its previous tenancy.

Experience has confirmed the Court's view that the ultimate destruction of the project through vandalism is certain, in spite of guards, unless the project is inhabited.

The basis of the defendants' claim that it will cost $535,000 to restore the buildings, now inexplicably reduced to $139,000, has never been submitted to the Court. Moreover, HUD uses complete compliance with the housing code as its benchmark in generating cost estimates. This is substantially more than required by the Court's Order. No major rehabilitation is contemplated *pendente lite*, but only that HUD return the buildings to the minimally habitable conditions existing as of the time it evict-

ed the tenants. On March 7, 1975, at defendants' instance, the Court specifically clarified its Order in open court to make clear that no repairs need be undertaken of units except those needed to house returning tenants. There are 15 families already back in Sky Tower, 18 others have indicated their desire to move back, and 22 additional families have not as yet been located.

No less is required if the project is to continue to exist during this litigation.

Defendants' motion to be relieved from certain requirements of the Preliminary Injunction accordingly will be denied. Indeed, the Order must be strengthened since it has come to the attention of the Court that HUD has chosen not to attempt good-faith compliance with the Court's Order. No informed or even casual observer can fail to recognize that inadequate housing for low-income families is at the root of the social unrest, the violence and the general squalor that typifies large sections of many metropolitan areas, including the District of Columbia. Congress has long recognized that the public interest requires this situation be remedied. It has passed statutes and appropriated large sums to this end. The instant case illustrates the wide gap that persists between this legislative commitment to action and the performance by HUD to which Congress has delegated responsibility.

In this concrete instance HUD has ignored its responsibilities in spite of the urgent need for low-income housing in the Nation's Capital and an effective Order of this Court.

No low-income family will be housed by creating another vacant lot. Persisting in its determination to tear down useful housing constructed at Government expense, HUD continues to refuse to spend money to make the structures again minimally habitable. Tenants now in the structures and others who seek accommodation have brought forward substantial grounds to conclude that HUD has ignored its statutory responsibilities. It is no answer for HUD to say that demolition is more convenient, less expensive and justified by an alleged right to exercise unreviewable discretion. Nor can it fob off re-

sponsibility by pointing to the distressing lack of effective support which has so far been indicated by local authorities. HUD has a mandate to act with more sensitivity and courage and it is the responsibility of the Court to see that this mandate is carried out as Congress directed.

HUD's lethargic and minimal response to the Court's Order must cease. It must proceed to rehabilitate. The preliminary injunction previously entered and largely disregarded must be particularized in the light of experience to assure compliance.

Accordingly, within seven days from the date of this Order, HUD shall submit a detailed plan for achieving full compliance within 30 days with this Court's Order. This plan shall indicate by individual apartments what steps are required and a schedule for achieving compliance. Any failure to act in good faith in accordance with this directive will require immediate sanctions.

The motion to dismiss and the motion for a partial stay of the preliminary injunction are denied. Defendants shall submit a plan for compliance within seven days.

SO ORDERED.

/s/ Gerhard A. Gesell
United States District Judge

May 21, 1975.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

CARLA A. HILLS, ET AL., DEFENDANTS

ORDER TO SHOW CAUSE

It appearing from the affidavits and submissions filed with the Court that its Orders of February 7, 1975, and May 21, 1975, have been disobeyed by certain officers, agents, servants and employees of defendant Department of Housing and Urban Development having actual notice of said Orders, to wit: H. R. Crawford, Assistant Secretary for Housing Management; William K. Cameron, Director, Office of Property Disposition; Harry W. Staller, Area Director; William C. Belcher, Office of Property Disposition;

And it further appearing that on January 31, 1975, plaintiffs filed a Motion to Hold Certain Parties in Civil Contempt, which motion was heard by the Court and denied by reason of assurances of compliance then given; that on February 28, plaintiffs filed a Response to Defendants' First Weekly Report and Motion for Further Relief, which was withdrawn following further assurances given at a hearing on March 3; that on March 7, the Government orally sought and obtained certain clarifications of the February 7 Order; that on April 1, the Government moved for partial relief from the February 7 Order, which motion was subsequently denied; that during a hearing on May 15, the Court pointedly called to Government counsel's attention the continuing defiance of the Court's Order apparent from defendants' weekly reports; that on May 16, plaintiffs filed a Motion for Supplementary Order raising again the issue of non-compliance, which motion has not been answered nor acted on by the Court; that in its Order of May 21, the Court

ordered defendants to devise a plan within seven days for achieving compliance with the Court's Order within 30 additional days and further stated "Any failure to act in good faith in accordance with this directive will require immediate sanctions";

And it further appearing from plaintiffs' submissions, affidavits filed and defendants' weekly reports that the Court's Orders of February 7 and May 21 have been and are being ignored in the following respects:

1. That defendants' agents have failed to act with due diligence to carry out the Order of February 7, in that at least 18 families have indicated a desire to return to Sky Tower and have not been allowed to do so, and that many apartments need, and have for four months needed, only minor repairs, painting and the reinstallation of appliances before they can be reoccupied, which repairs and painting have not been accomplished, although ¶ 5 of the February 7 Order required work to "begin immediately and proceed expeditiously" to restore all necessary units, and ¶ 6 required that former tenants be permitted to return "as promptly as the repair work and the schedules of the returning families may permit";

2. That more than 20 families have not yet been contacted due to the failure of defendants' agents to act with due diligence, including their failure to use their good offices with the National Capital Housing Authority to obtain addresses, although ¶ 6 of the Order of February 7 required defendants and their agents to "attempt immediately to locate all former tenants who left Sky Tower subsequent to September 17, 1974";

3. That up to this date defendants' agents have failed to prepare for submission to this Court a plan responsive to the May 21 Order, filing instead a series of specifications apparently previously drawn up for the purpose of estimating the costs of total rehabilitation, including many cosmetic repairs beyond the scope of the Court's Order;

4. That compliance with the Court's Order has not been achieved, no plan or schedule has been drawn up and put into operation for achieving compliance within

a reasonable time, and defendants' agents to this day continue to refuse to undertake meaningful steps to obey the Order, although ample time has passed since it was entered;

Now, therefore, acting pursuant to the aforementioned motions and the inherent power and duty of the Court to see to it that its lawful orders are enforced, it is hereby

ORDERED that H. R. Crawford, William K. Cameron, Harry W. Staller, and William C. Belcher shall appear in person in Courtroom No. 6 of the United States Court House, District of Columbia, at 3:00 p.m. on June 25, 1975, or at such later time as the Court may direct, to respond and show cause, if any there be, why they and each of them personally ought not be held in civil contempt of this Court pursuant to 18 U.S.C. § 401(3) for disobedience of the Orders of this Court.

Now, therefore, it is further

ORDERED that the United States Marshall shall promptly cause copies of this Order to Show Cause to be served on Robert M. Werdig, Jr., Esquire, Assistant United States Attorney, Room 3425, United States Court House, attorney for defendants, and also upon the aforementioned H. R. Crawford, William C. Cameron, Harry W. Staller and William C. Belcher individually.

/s/ Gerhard A. Gesell
United States District Judge

June 9, 1975

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

CARLA A. HILLS, ET AL., DEFENDANTS

AFFIDAVIT OF EDWARD J. STEPTOE, JR.

District of Columbia, ss:

I, Edward J. Steptoe, Jr., being duly sworn, do depose and say:

1. I am a third-year law student at Antioch School of Law, and I am employed as a summer law clerk by Ann K. Macrory, Esquire, of the Washington Lawyers Committee for Civil Rights Under Law. I have been working under the supervision of Florence Wagman Roisman and Lynn Cunningham, Esquires, for the purpose of contacting former Sky Tower tenants in connection with the present litigation.

2. By phone call or personal visit, I was able to contact the following tenants of Sky Tower who definitely plan to move back to the premises as soon as they are permitted to do so, and to obtain from them the following information:

Name and Present Address	Former Address	Sky T. Unit Size	Sky Tower Rent	Present Rent	Condition of Sky Tower Unit [1]
Dennis Cannon 4226 4th St., SE #101	1034 Wahler Pl, SE #203	2-BR	$ 73	$151	To Be Rehabbed
Lucinda Cannon 3052 Thayer St., NE	1040 Wahler Pl, SE #204	6-BR	$140	$225	" " "
Mary Cole 740 Atlantic St., SE	1034 Wahler Pl, SE #102	4-BR ***	$175	$ 48	" " "
Sadie Cole 740 Atlantic St., SE	1034 Wahler Pl, SE #101	2-BR	$ 84	$ 48	" " "

*** Needs only a three-bedroom unit, due to reduction in family size.

[1] This information was obtained from the "Specifications for Rehabilitation," filed by the defendants on May 28, 1975.

Name and Present Address	Former Address	Sky T. Unit Size	Sky Tower Rent	Present Rent	Condition of Sky Tower Unit [1]
James Cunningham 1314 Southview Dr. Oxon Hill, Maryland	1040 Wahler Pl, SE #101	2-BR **	$ 75	NA	To Be Rehabbed
Tyronne Dandridge 1300 Southview Dr. #201 Oxon Hill, Maryland	1064 Wahler Pl, SE #204	2-BR **	$105	NA	" " "
Delva Ferguson 7430 Landover Rd., Apt. F Landover, Maryland	1022 Wahler Pl, SE #201	3-BR	$ 84	NA	" " "
Collis Green 2657 Stanton Rd., SE #210	1070 Wahler Pl, SE #103	NA ****	NA	NA	Demolished
Rosa Mae Harkless 1122 Kennebec St. #T-2 Oxon Hill, Maryland	1058 Wahler Pl, SE #302	4-BR	$105	NA	Occupied
Thomas & Delores Jordan 3849 9th St., SE	1022 Wahler Pl, SE #2-2	4-BR	$175	$120	To Be Rehabbed
Barbara Powell 1717 Montana Ave., NE	1028 Wahler Pl, SE #201	6-BR	$200	$ 41	Occupied
Grozelia Stepney 3420 22nd St., SE #102	1070 Wahler Pl, SE #302	2-BR	$105	NA	Demolished
Gertrude Stewart 227 51st St., NE #21	1040 Wahler Pl, SE #102	4-BR	$175	$ 40	To Be Rehabbed
Juanita Randolph 1319 Congress St., SE #101	1028 Wahler Pl, SE #101	3-BR *****	$ 98	$185	To Be Rehabbed

3. I was unable to contact the following former tenants who had previously indicated their desire to move back to Sky Tower (see Sixth Weekly Report, filed March 28, 1975).

Raymond & Margaret Bell 1374 Savannah St., SE #102	1022 Wahler Pl, SE #101	3-BR	$ 94	NA	To Be Rehabbed
James Herbert 1395 Congress St., SE #101	1064 Wahler Pl, SE #202	4-BR	$166	NA	" " "
Gloria Halsey 2308 Green St., SE # 103	1028 Wahler Pl, SE #102	2-BR	$ 84	$155	" " "
Joanne Royster NA	1028 Wahler Pl, SE #102	4-BR	$175	NA	To Be Rehabbed
Margaret Taylor 1324 Savannah St., SE #202	1051 Wahler Pl, SE # 201	3-BR	$ 94	$185	Occupied
Lois Thomas 1389 Congress St., SE #202	1075 Wahler Pl, SE #101	3-BR	$117	$185	To Be Rehabbed

4. One additional tenant, Jean Procter, currently living at 2518 Sheridan Road, S.E., said she wants to move

---

[1] This information was obtained from the "Specifications for Rehabilitation," filed by defendants on May 28, 1975.

** Needs a three-bedroom unit due to increase in family size.

**** Needs a four-bedroom unit.

***** Needs a four-bedroom unit due to increase in family size.

back to Sky Tower, but that she is not certain whether she is still eligible to receive rent supplement due to an increase in her income. Ms. Procter lived at 1028 Wahler Place, S.E. #201. The rent on her six-bedroom apartment was $200. The unit, however, is now already occupied. She is waiting to find out from the defendants if she can continue to receive rent supplements if she returns to Sky Tower.

5. Other former tenants have indicated, either to me or to other persons in Ms. Roisman's law office, that they are seriously thinking about moving back to Sky Tower. They are concerned, however, about a number of problems at Sky Tower and seem to be waiting to see what progress is made in putting the buildings and grounds back in habitable condition before they finally decide. Most of them said they would rather pay the higher rent at the places in which they are now living than move to face the problems of poor security and the accumulated rubble from the demolition which still is on the grounds and which is unsafe for their children. In addition, many former tenants expressed doubt as to whether they would be able to remain in Sky Tower for any length of time, fearing that the buildings would be torn down again once the law suit ended.

6. The former tenants who have expressed an interest in returning to Sky Tower, but who have not yet made up their minds, include:

Elizabeth Harmon
1389 Congress Street, S.E. #101

Mary Allen (and daughter Gwendolyn) Huggins
853 Yuma Street, S.E.

Willias Rice
1389 Congress Street, S.E. #302

Andrew Young
1374 Savannah Street, S.E. #102

7. Virtually all of the former tenants contacted who intend to return to Sky Tower expressed a desire to be

placed in units on the second or third floors of the buildings that are rehabilitated. Those who had previously lived in units on the first floor said that those apartments had developed many more problems (plumbing, falling ceilings, etc.) than units above them. Others said they wanted to be above the first floor because of the poor security in the buildings and the fact that much of the rubble from the demolition work had accumulated in the first floor halls and posed a danger to their children.

/s/ Edward J. Steptoe, Jr.
EDWARD J. STEPTOE, JR.

SUBSCRIBED AND SWORN TO before me this 23rd day of June 1975.

/s/ [Illegible]
Notary Public

My Commission Expires Aug. 14, 1979

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

CARLA A. HILLS, Secretary of Housing and Urban Development, ET AL., DEFENDANTS

AFFIDAVIT OF HARRY W. STALLER

HARRY W. STALLER, first being duly sworn, deposes and says:

1. This affidavit is submitted for purposes of explaining the circumstances under which HUD acquired title to the Sky Tower project and other facts relevant to the relocation of Sky Tower tenants. Although I did not become Acting Director of the HUD D.C. Area Office until July 1973 the statements contained herein are based upon reports from members of my staff and documents contained in the project files, as well as my personal knowledge.

2. The sponsor of the Sky Tower project, Anacostia No. One, Inc., experienced difficulty with the original general contractor and through the mortgagee for the project Walker and Dunlop, Inc., requested in March 1972 that HUD approve a substitution of contractors and an increase in the maximum amount of the mortgage from approximately $2.9 million to $3.2 million. An interim increase in the insured mortgage is an unusual action which increases HUD's liability. In fact, it is my understanding that an interim increase had never been granted in this office prior to that time. However, because of HUD's desire to have the project completed, the requests were approved by June 1972.

3. The second contractor abandoned work on the project in November 1972. HUD allowed the sponsor to attempt to finish the project by itself. However, in January 1973, the second contractor filed a law suit against the

sponsor and mortgagee and, in addition, placed a lien on the property on February 22, 1973, in violation of the terms of the construction contract.

4. Since the owner was unable to bond off the mechanics lien, no further mortgage proceeds could be drawn to fund interest and construction costs. On March 1973, Walker and Dunlop, Inc., the mortgagee for the project, notified the Area Office of the default citing as a basis the fact that the contractor had quit the project, a lien had been placed on the project, and, interest due February 1 had not been paid. A copy of the notice of default is attached hereto, as Exhibit I and incorporated herein.

5. Under HUD Regulations, when a project is in default, the mortgagee has the option of either foreclosing the mortgage or assigning it to HUD. By letter dated April 4, 1973, Walker and Dunlop informed the Area Office that it had elected under the terms of the contract for mortgage insurance to foreclose on the property. A copy of this letter is attached hereto as Exhibit II and is incorporated herein.

6. In the following weeks the sponsor of the project requested another increase in the maximum amount of the insured mortgage. Because of the past history of the project and since this increase would require rents in excess of what tenants in the neighborhood could afford or would be willing to pay, HUD had no alternative but to reject this request.

7. By letter dated May 7, 1973, Walker and Dunlop notified the HUD Central Office of its intention to foreclose on the mortgage at the earliest possible date. A copy of this letter is attached hereto as Exhibit III and is incorporated herein.

8. HUD accepted title to and possession of the property on June 15, 1975, and subsequently paid Walker and Dunlop mortgage insurance benefits approximately in the amount of proceeds disbursed under the mortgage during construction.

9. HUD's managing agent sought to enter into new lease agreements with tenants residing at Sky Tower at the time of acquisition who formerly were subject to

leases with the sponsor. None of these leases were for a period greater than one month. The rent charged was to be equal to that which tenants paid to the sponsor under their previous leases. The lease held by the National Capital Housing Authority was extended on a month to month basis.

10. By October 1, 1974, there were 30 tenants who were delinquent in the payment of rent: 14 tenants owed more than $500.00 in back rents with 3 owing more than $2,000.00.

/s/ Harry W. Staller
HARRY W. STALLER

Subscribed and sworn to before me this 18th day of July, 1975.

/s/ Vivian D. McCrimmon
VIVIAN D. MCCRIMMON
Notary Public
My Commission Expires
Jan. 31, 1976

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

CARLA A. HILLS, ET AL., DEFENDANTS

ORDER

Upon consideration of the complaint, the motions of the parties for partial summary judgment respecting plaintiffs' claim for relief based upon the Uniform Relocation Assistance and Real Property Acquisition and Policies Act of 1970, 42 U.S.C. 4601 *et seq.* (hereinafter referred to as "the Act"), the memoranda of points and authorities, exhibits and argument of counsel in support thereof and in opposition thereto and the Court being advised in the premises, it is by the Court this 12th day of September, 1975, pursuant to 28 U.S.C. 2201,

DECLARED AND ADJUDGED that by having come into possession of the Sky Tower Apartment project as the result of a mortgage default, HUD was "the acquiring agency" within the meaning of the Act; and it is further

DECLARED AND ADJUDGED the notices of September 27, 1974 advising Sky Tower tenants to vacate were the "written order of the acquiring agency to vacate real property" within the meaning of the Act; and it is further

DECLARED AND ADJUDGED the notices aforesaid were "for a program or project undertaken by a federal agency" within the meaning of the Act, to wit, the demolition of Sky Tower; and it is further

DECLARED AND ADJUDGED that all persons who were tenants at Sky Tower as of September 27, 1974 and

vacated their apartments on or after that date and prior to August 1, 1975 are "displaced persons" to whom the Act's benefits are available; and it is finally

DECLARED AND ADJUDGED said tenants who vacated their apartments as a result of the notice of September 27, 1974 are entitled to a prorated portion of the benefits provided under Section 204 of the Act for the period commencing upon the date of their move from Sky Tower and terminating August 1, 1975 (or the date on which any such person returned to Sky Tower, if earlier than August 1, 1975), by which dates the availability of apartments at Sky Tower for tenants shall be deemed to constitute provision of comparable relocation housing as required by sections 205(c)(3) and 204(1) of the Act, so as to waive the provision of any other benefits under the Act to said tenants; and it is

ORDERED that, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Court hereby directs entry of a final judgment as to this one of several claims of the plaintiffs, there being no just reason for delay.

The reasons for the certification under Rule 54(b) (see *Allis-Chalmers Corp.* v. *Philadelphia Electric Co.*, 3rd Cir., July 10, 1975), are as follows:

1. The adjudicated and unadjudicated claims are separate and distinct.
2. There is no possibility that the need for review will be mooted by future developments in the district court.
3. There is no possibility that the reviewing court will have to consider the issue a second time.
4. No claim or counterclaim has been presented which could result in set-off against the judgment sought to be made final.
5. The issue defendants have raised is of general public importance warranting prompt appellate disposition, and is certainly not frivolous; to some extent this is a case of first impression; and the needs of plaintiff class warrant reaching a final disposition of this issue without awaiting determination of the other issues in the litigation.

The Court accepts defendants' understanding that, because this order provides for declaratory rather than injunctive relief, defendants are not required to make payments hereunder pending final decision on appeal.

/s/ Gerhard A. Gesell
GERHARD A. GESELL
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

CARLA A. HILLS, ET AL., DEFENDANTS

REMAND ORDER

The Secretary of Housing and Urban Development ("Secretary") having concluded to reconsider the disposition determination involved in this litigation, calling for the demolition of the Skytower project, and in that connection to address the matters dealt with in the Court's Findings of Fact, Conclusions of Law and Preliminary Injunction Order entered February 7, 1975, the Court's further Order entered May 21, 1975, the changed circumstances resulting therefrom, and other pertinent factors;

The Secretary having further concluded that all interested persons should be afforded reasonable notice and opportunity to submit views in writing as to the disposition redetermination which the Secretary is now undertaking to make relative to this project; and

The Secretary having delegated authority with regard to disposition of housing owned by the Department to the Assistant Secretary for Housing Management,

It is by the Court this 15 day of September, 1975 ORDERED:

1. This cause is remanded to the Secretary for HUD reconsideration of the disposition determination with regard to the Skytower project involved in this litigation, and the making of a new determination whether or not to demolish in this instance.

2. The Secretary's decision on reconsideration shall consider and report on all factors considered pertinent, including specifically each of the following:*

a. A list and evaluation of reasonable alternatives for the disposition of Skytower.

b. The relationship of each alternative, including demolition, to the achievement of statutory housing objectives and national housing policies.

c. The availability in D.C. of relocation housing for the tenants of Skytower, and for low income persons, especially those with large families.

d. Whether the funds that would be required to operate Skytower on a continuing basis after rehabilitation as decent housing in a suitable living environment, would provide greater benefits by way of such housing for low income families, by being otherwise employed. In this connection, what the prospects are that Skytower, if rehabilitated and so operated, would survive as decent, safe and sanitary housing at reasonable cost.

e. Fiscal considerations, including the availability of subsidy funds under Section 8 of the Housing Act of 1937, as amended, and other HUD programs. Is revenue-sharing relevant, and, if so, how?

f. The effect of each alternative upon the tenants, nearby residents and the surrounding neighborhood, including the consequences for the further development and improvement of that neighborhood in accordance with land use planning for Anacostia by the District of Columbia.

g. The prospective effect of each alternative on the concentration of minority group families in the neighborhood, the District of Columbia, and the

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* If the Secretary determines to demolish, the Secretary shall indicate the source of such authority and under what conditions it should, in the Secretary's judgment, be exercised.

metropolitan area, and on income mix among tenant families.

h. Environmental considerations from the standpoint of NEPA and departmental directives implementing that statute, not encompassed by the foregoing factors.

3. The District of Columbia (granted status as *amicus curiae* in the litigation upon its motion) is requested, in accordance with its assurance to the Court, to provide HUD and plaintiffs in connection with the HUD remand proceedings such additional information or data as they may request, relevant to the matter of proper HUD disposition of the Skytower project (provided that this can be done without undue District burden or expense). The Court will confer with the parties and *amicus curiae* as needed if the District interposes objection to supplying HUD or the plaintiffs such requested additional information or data.

4. Copies of the proposed HUD determination, together with such supporting data as HUD includes therewith, shall be made available for examination by interested persons, including the District of Columbia. Counsel for the plaintiffs in this proceeding and counsel for the District of Columbia, shall be furnished promptly with copies of the proposed HUD determination by mail, and shall be notified that the supporting data may be examined either at the project office or at the Area Office of HUD for the District of Columbia during ordinary business hours. Interested persons, including plaintiffs and counsel for the plaintiffs, and the District of Columbia shall be invited to furnish HUD with written comments upon the proposed HUD determination, including additional alternatives, if any, and the reasons offered in that document for rejection of other alternatives. Notice of this invitation shall be published in *The Washington Post*, the *Star-News* and the *Afro-American*. Such comment shall be made within thirty days from the date of newspaper publication.

5. In their comments, plaintiffs' counsel shall and the District is requested to, discuss the factors listed in para-

graph 2. If any of the factors is not considered relevant or feasible, plaintiffs' counsel shall, and the District is requested to, give their reasons for reaching that conclusion. The District is also requested to discuss what funds and other revenues, if any, the District will make available for Skytower, including any "block grant" funds the District derives under Title I of the Housing and Community Development Act of 1974, to assist in making such disposition of Skytower as the District may recommend.

6. Failure to timely raise administratively any issue or legal or factual contention then available shall foreclose raising on court review any such issue or legal or factual contention.

7. Consent to this order does not constitute agreement by the Secretary with the Court's rulings to date, nor to the relevancy of all of the factors stated herein. However, the Secretary agrees that HUD shall consider those factors, and the HUD findings shall discuss them; but this is without prejudice to the legal position the Secretary may choose to assert with regard to the legal predicates of the Court's rulings or to the factors. Consent to this order also does not constitute a commitment by the Secretary to follow the procedures set forth herein relative to other property dispositions.

8. HUD shall file with the Court on or before February 20, 1976, copies of its redetermination, accompanied by the "administrative record," and an appropriate motion for final disposition of the litigation.

9. The preliminary injunction, as clarified, shall remain in effect pending conclusion of the proceedings specified herein, and subject to further order of this Court.

/s/ Gerhard A. Gesell
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

CARLA A. HILLS, ET AL., DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given this 11th day of November, 1975, that defendants hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 12th day of September, 1975 in favor of plaintiffs against said defendants.

ROBERT M. WERDIG, JR.
Attorney for Defendants
Room 3425 U. S. Courthouse
Washington, D.C. 20001
426-7263

cc:
Florence W. Roisman, Esq.
2000 P Street, N.W.
Washington, D.C. 20036

Morris Kletzkin, Esq.
Asst. Corporation Counsel
District Building
14th & E Streets, N.W.
Washington, D.C. 20004

Adelaide M. Miller, Esq.
Neighborhood Legal Services
616 Portland Street, S.E.
Washington, D.C. 20032

Ann K. Macrory, Esq.
Lawyers Committee for Civil
Rights Under Law
733 - 15th Street, N.W.
Washington, D.C. 20005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 74-1872

SADIE E. COLE, ET AL., PLAINTIFFS

v.

CARLA A. HILLS, ET AL., DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given this 20th day of November, 1975, that Plaintiffs hereby cross-appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 12th day of September, 1975 in favor of Plaintiffs against said Defendants.

/s/ Florence Wagman Roisman
FLORENCE WAGMAN ROISMAN
Attorney for Plaintiffs
2000 P Street, N.W.
Suite 410
Washington, D.C. 20036
202/452-8050

* * * *

[11] THE COURT: And then what happens?

MRS. ROISMAN: Well, Your Honor, I think as to the returning tenants, I don't think there will be any dispute because—

THE COURT: No, I am not talking about the returning tenants. I am talking about the majority of your class that doesn't want to come back—that is the group I am talking about. The great bulk of these people listed in the report don't want to have anything to do with Skytower. They walked away from what they brought suit for, and now they want money, and that is where we are at.

MRS. ROISMAN: Well—

THE COURT: And I want to know how that is going to be handled.

MRS. ROISMAN: Well, to be fair, Your Honor, I do want to say that it is not that they have walked away—

THE COURT: They certainly have. They certainly have, and it has been a great disappointment after the extraordinary effort the Court made on representations as to their need—they all walked away from it.

Now, I don't want to argue that, but they did.

Now, how do we get them the money? How do we get them the money?

MRS. ROISMAN: If the Agency processes their claims the same way that it processes all Relocation Act claims, it will pay to them, in addition to the moving expenses and dislocation allowances, and any of them have had to pay more than 25% of their income in order to secure decent, safe, and * * *

* * * *

[33] FINDINGS OF THE COURT: THE HONORABLE GERHARD A. GESELL, UNITED STATES JUDGE:

The Court has before it on the able arguments of Counsel and the Briefs, what appears to the Court to be an extremely narrow question of pure Statutory interpretation.

The arguments, as they have been advanced by counsel on both sides appear to the Court in part to be an effort to interpret the entire provisions that are before us, as they relate to other cases, and other situations which may or may not be in issue with respect to the application of the Uniform Relocation Act, and the definition of "displaced persons".

Obviously, the Court should not approach this problem except in the narrowest sense as a Statutory interpretation question relating to the issue presented on this—essentially—application for declaratory judgment.

The Court is of the view that HUD is an acquiring agency. There is no dispute that it acquired the particular real property here involved. Second, it is undisputed

that this Federal agency gave notice to vacate so that the alternative provision of the definition in 101.6 which concerns, not the reasons for acquisition but the subsequent conduct of the acquiring agency, is met both as to the requirement of acquiring agency and the notice to vacate.

If the Statute is interpreted to require that the notice to vacate be for a program or project undertaken by the Federal agency, is it not obvious that the program or project undertaken by HUD was to demolish Skytower and, in that simple manner, I don't see that there is any other problem before the Court.

[34] It would, therefore, seem to me that these relocation benefits are available to those tenants who received notice to vacate on or after September 27, 1974.

The question remains as to whether or not such payments should or should not run beyond the period which I fix roughly as of tomorrow, when, on the basis of the reports before the Court, it is apparent that the facilities for returning tenants are available in substantial compliance with the requirements of the Statute and of the Court's order. It seems to the Court that these benefits should not be paid beyond the date of August 1, 1975, regardless of whether a tenant did or did not return to Skytower.

I reach that conclusion which, in a sense, may involve a gloss on the Statute but surely tenants should not be allowed, when seeking intervention of a Court of equity, and obtaining judgment, albeit, preliminarily, entitling them to return to adequate facilities, to wait out their turn outside for 4 years, to pocket $4,000 and, at the same time—having sought to be returned to the property and having had an Order returning them to the property—turn that aside as something they didn't really want. So in my view the issue here is purely the issue of the compensation or payments, if any, due to those tenants who vacated pursuant to the notice, to cover only those payments which would need to be obligated for the period from September 27 to August 1, 1975.

* * * *

SUPREME COURT OF THE UNITED STATES

No. 77-1463

PATRICIA ROBERTS HARRIS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

v.

SADIE E. COLE, ET AL.

ORDER ALLOWING CERTIORARI

Filed June 19, 1978

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 77-874 and a total of one hour is allotted for oral argument.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1978 269382 70

Supreme Court, U. S.
FILED
JUN 2 1978
MICHAEL RODAK, JR., CLERK

No. 77-1463

IN THE

Supreme Court of the United States

October Term, 1977

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *ET AL.*,
Petitioners,

v.

SADIE E. COLE, *ET AL.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

JOHN VANDERSTAR
THEODORE VOORHEES, Jr.
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorneys for Respondents

Of Counsel:

FLORENCE WAGMAN ROISMAN
National Housing Law Project
1025 Fifteenth Street, N.W.
Washington, D.C. 20005

ADELAIDE MILLER
Neighborhood Legal Services Program
616 Portland Street, S.E.
Washington, D.C. 20032

June 1978

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Supreme Court of the United States

October Term, 1977

No. 77-1463

PATRICIA ROBERTS HARRIS,
SECRETARY OF THE DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT, *ET AL.*,
Petitioners,

v.

SADIE E. COLE, *ET AL.*,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT

Respondents ("the tenants") were low-income tenants of Sky Tower, an apartment project located in Washington, D.C.[1] The project had been acquired by a nonprofit corporation, which undertook to rehabilitate the apartments. The permanent mortgage was insured and the

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[1]Many of the pertinent facts are found in two reported decisions by the District Court. Cole v. Lynn, 389 F. Supp. 99 (D.D.C. 1975); Cole v. Hills, 396 F. Supp. 1235 (D.D.C. 1975). The decision of the Court of Appeals is printed as Appendix A to the Petition for Certiorari and will be cited as "App. A., p. ____."

interest rate subsidized by HUD under Section 236 of the National Housing Act, 12 U.S.C. § 1715z-1 (1970). HUD provided rent supplements for a number of tenants and leased other units to the local public housing agency for re-lease to eligible families as public housing.

The rehabilitation effort ran into difficulties, however, and in early 1973 the contractor quit working and liened the project. This action, coupled with a missed interest payment, rendered the mortgage in default. Both the nonprofit mortgagor and the mortgagee were nonetheless prepared to continue the rehabilitation effort, but HUD insisted that the mortgage be foreclosed and took title to the property.[2] 389 F. Supp. at 101.

HUD operated the project for over a year, continuing the rehabilitation effort, but then decided on a different course: to evict the tenants, demolish the project, and sell the property to a private developer for the construction of conventional homes for middle-income families. This was pursuant to a master plan of the District of Columbia Government to "eliminate blight." (App. A., p. 11A). After evictions began, Judge Gesell enjoined HUD from carrying out the demolition plan (for reasons that are unrelated to

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[2]The Petition for Certiorari makes an important misstatement when it refers to "involuntary federal acquisitions such as the one involving Sky Tower." (p. 10) Judge Gesell found that HUD's acquisition of Sky Tower was not "involuntary," 389 F. Supp. at 101.

The dissenting judge on the court of appeals quarrels with the finding that HUD insisted on foreclosure. He relies, however, only upon (i) a HUD version of the facts set forth in an affidavit which contained mostly second hand information and which was not filed until months after the District Court's ruling on this issue (App. A., p. 26A & n.14), and (ii) upon the judge's own suppositions of what HUD "presumably" and "doubtlessly" did (*id.*, p. 28A & n.16). This approach hardly comports with the respect due a District Court's finding under Fed. R. Civ. P. 52(a).

the issues petitioners seek to have this Court review). 389 F. Supp. at 102-06.

As for the evicted tenants, HUD took the position that they were not "displaced persons" within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. §§ 4601 *et seq.* (the "Relocation Act").

Tenants who do qualify as "displaced persons" are entitled to:

(1) moving expenses, 42 U.S.C. § 4622;

(2) relocation assistance, which includes assurance that decent, affordable replacement housing is actually available to the tenants, 42 U.S.C. § 4625; and,

(3) where the only replacement housing available is at higher than affordable rentals, replacement housing payments to cover the difference (to a limit of $4,000), 42 U.S.C. § 4624; 24 C.F.R. § 42.95(c).

HUD did undertake to pay $300 in moving expenses to tenants who were current in their rent, to exempt them from paying their last month's rent, and to provide assistance in finding suitable new homes. HUD did not, however, assure the tenants that affordable replacement housing was available or make replacement housing payments. (App. A., p. 4A).

Thus, the practical significance of the District Court's decision was that the evicted Sky Tower tenants were entitled to receive replacement housing they could afford, or, in the alternative, to receive replacement housing payments. Of the 55 low-income families who moved out of Sky Tower pursuant to HUD's eviction notices, 18 returned

to Sky Tower after the District Court enjoined demolition of the project (App. A., p. 6A); thus, the case has little continuing significance with respect to these families, for they have had suitable relocation housing since the Fall of 1975. As for the remaining families, they were unable to find replacement housing for rents that did not exceed the rents they paid before being evicted. By the time of the Court of Appeals' decision, however, HUD had decided to transfer Sky Tower to the District of Columbia and to continue providing substantial rent subsidies. (App. A, p. 7A, n.17).

Two events since the Court of Appeals' decision have narrowed still further the practical significance of the decisions below. These events were foreshadowed in the Petition for Certiorari, which pointed out that HUD "is not insensitive to the hardships" that evictions like those involved here can cause and is attempting to ameliorate those hardships, either administratively or through further legislation. (Pet., pp. 18-19).

First, the agreement between HUD and the District of Columbia regarding transfer of Sky Tower to the District Government has been amended to provide that all former Sky Tower tenants will be given a priority right to return, as apartments become available, with HUD paying relocation expenses. (Letter from Earl J. Silbert, U.S. Attorney, dated March 2, 1978, appended hereto as Attachment "A")

Second, former Sky Tower tenants who reside in another HUD project, Congress Park, but have been paying market rent may have their rents subsidized to bring them down to the Sky Tower level, pending action on Sky Tower. Such a reduction for one family was described by HUD as "an accommodation extended to *Cole* plaintiffs" so that the Government's "decision to seek certiorari" will not "deny them all the relief to which they would otherwise be entitled" by reason of the decisions below. (Memorandum

from Marilyn Melkonian, Deputy Assistant Secretary, dated March 13, 1978, appended hereto as Attachment "B")

HUD has also been taking steps that may well prevent any recurrence of the distressing predicament in which respondents[3] found themselves. A HUD Task Force, which was appointed by the current Secretary a few months after she took office, has completed an extensive study of the disposition of low- and moderate-income housing acquired by HUD after mortgage default. The Task Force report, dated April 1978, states that when HUD acquires housing in this manner it should make every effort to avoid dispositions — such as demolition and sale to private developers — that would reduce the nation's stock of below-market housing. (Final Report of the HUD Multifamily Property Utilization Task Force, April 1978, at *e.g.* pp. I, II-21, VI-2.) It is already HUD policy that demolition of low-income housing projects may not take place without the personal approval of the Secretary (*id.* at p. viii), and instead such projects must be repaired "unless there are compelling reasons not to repair them." (Memorandum from the Commissioner of FHA dated April 5, 1978, p. 1, attached as Appendix A to the Task Force Report)

The pertinent committees of both houses of Congress apparently agree with these determinations by HUD. The Senate committee has reported out a bill, entitled "Housing and Community Development Amendments of 1978," which would declare congressional policy to be "to minimize the displacement of persons from their homes and neighborhoods" as a result of Federal programs. It also would require HUD to report to Congress its recom-

[3]Or other such tenants, including the petitioners in Alexander v. U.S. Department of Housing and Urban Development, 555 F.2d 166 (7th Cir. 1977), petition for writ of certiorari pending, No. 77-874.

mendation for, *inter alia*, alleviating the problems caused by those displacements that cannot be avoided, specifically including displacements of "tenants who are not deemed eligible for assistance under the Uniform Relocation Act." (S. 3084, Sen. Rep. No. 95-871, 95th Cong., 2d Sess., May 15, 1978, p. 50) The House committee report strongly endorses the same policy against displacement of low-income tenants and recommends action by the Secretary "to assure that suitable and affordable housing is available" to persons who are displaced. (H.R. Rep. No. 95-1161, 95th Cong., 2d Sess., May 15, 1978, p. 23)

REASONS THE WRIT SHOULD NOT BE GRANTED

1. Assuming petitioners are correct in arguing that the decision below conflicts with decisions in other circuits (and we show *infra* that this is not correct), the recent events summarized above show that whatever practical significance the decision may once have had is disappearing.

It is axiomatic that this Court, with its extraordinarily heavy caseload, does not sit to review every lower court decision that might arguably be incorrect. Sup. Ct. R. 19. Instead, the matter presented for review must have considerable significance far beyond the four corners of an individual lawsuit, even if it is a class action. There must be "special and important reasons" for review on certiorari. *Id.* This standard for review by this Court is exceedingly important to the proper functioning of the Court.

This case plainly does not fit within this stringent standard — even if we indulge the assumption that there is a conflict in the circuits.

(a) At the time the 55 Sky Tower tenant families were evicted, the principal benefit which HUD denied them, and which the lower courts would require, was to assure them

suitable and affordable relocation housing. The other benefits available to "displaced persons" were substantially provided.

(b) This benefit is of no further *prospective* significance with regard to the 18 families who have already returned to Sky Tower or to the remaining families who will return to Sky Tower pursuant to the agreement between HUD and the District of Columbia — at subsidized rents — when suitable apartments become available there. Indeed, it is conceivable that all of the original 55 evicted families will have been restored to subsidized rent status before this Court could act on the merits of this case.

(c) There is little chance that other low-income tenants of HUD-owned housing will find themselves in a situation comparable to that of the tenants in this case. Demolition of such projects is now disfavored and in any event requires the personal approval of the Secretary. Moreover, HUD has for some time been seeking ways to ameliorate the distressing burden that can be caused when demolition is the only feasible course, and those efforts can be presumed to be continuing,[4] especially in view of the recent expressions of interest by the committees of Congress that are considering amendments to the pertinent Federal housing laws.[5]

In short, a decision either affirming or reversing the decision below is likely to have little or no impact on the fundamental issue: the treatment of low-income tenants

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[4]Both the letter from U.S. Attorney Silbert and the memorandum from Deputy Assistant Secretary Melkonian make this clear.

[5]We are at a loss to understand how allowing the decision below to stand will "deprive the Department of the flexibility it needs" to develop suitable new relocation policies, as petitioners contend (Pet., p. 19).

displaced from HUD-acquired, multifamily subsidized housing projects.

2. The argument set forth above assumes that there is in fact a conflict between the decision below and three other decisions in three other circuits. *Alexander v. U.S. Department of Housing and Urban Development, supra; Harris v. Lynn*, 555 F.2d 1357 (8th Cir. 1977), *affirming* 411 F. Supp. 692 (E.D. Mo. 1976), *cert. denied*, October 31, 1977 (No. 77-5233); and *Caramico v. Secretary of the Department of Housing and Urban Development*, 509 F.2d 694 (2d Cir. 1974). In truth, however, there is no such conflict. All four decisions are consistent.

Petitioners agree that the tenants are eligible for full statutory relocation benefits if they may be deemed "displaced persons" under Section 101(6) of the Relocation Act, 42 U.S.C. § 4601(6). That section provides in pertinent part:

> "The term 'displaced person' means any person who . . . moves from real property . . . as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; ***."

As noted by the Court of Appeals, this provision sets out two alternative grounds of eligibility for statutory benefits: (1) those who move as a result of the acquisition of property for a Federal program or project (the "acquisition clause"), or (2) those who move as a result of a written order of the acquiring agency to vacate the property for a Federal program or project (the "notice clause").

The facts in the instant case make it clear that HUD was an "acquiring agency," that written orders to vacate were

issued to the tenants pursuant to a Federal "program or project," and that the tenants moved "as the result of" HUD's orders to vacate. Based on the plain meaning of Section 101(6), therefore, the Court of Appeals found the tenants eligible for benefits under the notice clause of the Relocation Act. (App. A, pp. 9A-11A).

Petitioners argue, however, that benefits should have been denied because of the absence of two further limiting tests, not specified in Section 101(6) but purportedly found in the *Alexander, Caramico* and *Harris* cases. They argue (1) that the notice to vacate must be issued simultaneously with the acquisition or proposed acquisition, citing *Alexander* and *Harris*, and (2) that the statute applies only to displacements for construction projects, thereby excluding displacements due to demolition, citing *Alexander* and *Caramico*.

Those cases, however, do not stand for the propositions for which petitioners cite them.

First, neither *Alexander* nor *Harris* turned on the existence of a time lag between acquisition and notice.

In *Alexander*, HUD held the mortgage to the defaulting apartment complex for three years and operated the project for a period of time following foreclosure. The complex was then vacated because it was "plagued by unsafe conditions" and had become "an irretrievable failure," 555 F.2d at 168, 170. Relocation benefits were denied in *Alexander* because the court found no Federal "program or project" in HUD's surrender to necessity, not because of any delay between the acquisition and the decision to vacate the buildings.

The facts in the *Harris* case are even more remote. The court was interpreting the "acquisition" clause and not the "notice" clause of Section 101(6). In *Harris* the failing apartment complex was never "acquired" by HUD; it was

owned at all times by the St. Louis Housing Authority whose decision, with HUD's concurrence, led to the project's demolition. In response to elaborate theories devised by the plaintiffs to demonstrate a Federal "acquisition," the court assumed for purposes of argument that an attenuated form of Federal acquisition might have occurred in 1955 — eighteen years prior to the displacements. Holding that "displaced persons" under the Act are limited "to those forced to move as a result of an 'acquisition'", the court simply decided that the 1973 displacements could in no sense be the "result of the government's alleged 1955 'acquisition' of ownership." 411 F. Supp. at 695. Nothing in *Harris* requires the rigid rule of simultaneity between acquisition and displacement urged by petitioners here.

Second, it is inaccurate to contend that *Alexander* and *Caramico* limit eligibility to displacements caused by Federal "construction" projects and deny eligibility when the displacements are caused by mere "demolition."[6] The discussion of Federal highway or housing "construction" projects in *Alexander* and *Caramico* was intended only to

---

[6]The dissent in this case offers no comfort to this argument. Suggesting that this theory was only a straw man devised by the majority, Judge Wilkey wrote that the government would never make this "rather simple-minded" and "clearly flawed" argument. Significantly, Judge Wilkey found that:

> "Not only would this argument generally be rather simple-minded, because demolition usually precedes construction, but HUD would have to know that it would be inapplicable here, as Sky Tower was concededly being torn down to make way for the construction to single-family units." App. A., p. 34A.

It is significant that HUD's own regulations provide that demolition projects are "programs or projects" within the meaning of the Relocation Act. Relocation Handbook 1371.1 REV (2/20/75), Sec. 1-60, p. 1-5.

distinguish the facts in those cases — wherein HUD *involuntarily* acquired title to failing housing projects and vacated them with no other purpose than to terminate the project — from the conventional Federal programs specifically designed to cause displacement in order to achieve a public benefit. In both cases the courts were unwilling to tax the Federal government with relocation obligations where the displacements were found to be wholly "random and involuntary" and lacking in any affirmative public purpose.

In the *Alexander* case, the mortgage was assigned to HUD in 1970 and held for three years before HUD foreclosed "in the face of the mortgagor's continuing default." 555 F.2d at 167. HUD then acquired title to the property and sought unsuccessfully to manage it. The property had declined so dramatically, however, that HUD decided to terminate the project, vacate the tenants, and demolish the buildings. Contrary to petitioners' assertion, the *Alexander* court did not deem the Relocation Act inapplicable because of the absence of a Federal construction project. It held only that since the government decided to demolish the housing project there for no other reason than that it had become "an irretrievable failure," no "program or project" of any variety was present. The Seventh Circuit expressly interpreted the "program or project" phrase as requiring only "activities designed for the benefit of the public as a whole." (*Id.* at 170) The bare decision to demolish a failing housing complex was deemed insufficient because it was in no sense "a prelude to some governmental undertaking amounting to a program designed for the benefit of the public as a whole." 555 F.2d at 170. See App. A., p. 11A.

Similarly, in *Caramico* the court concluded that the default acquisition there was "random and involuntary" and not the result of a "conscious government decision." 509 F.2d at 698. In *Caramico*, the project owners defaulted

and the mortgagees sought to evict the plaintiff-tenants in order to comply with an FHA requirement predicating recovery of FHA guaranteed mortgage insurance on the tender of the property unoccupied. The court concluded that the FHA acquisition in *Caramico* was "clearly involuntary" and was accordingly not "for a program or project undertaken by a Federal agency" as required by the statute. 509 F.2d at 699.

In the instant case on the other hand, the District Court expressly found that the foreclosure-transfer to HUD was not "involuntary" but was imposed on the owners and mortgagees at HUD's "insistence". 389 F. Supp. at 101.[7] Further, the decision to vacate and demolish the Sky Tower complex had a specific objective "for the benefit of the public as a whole"; namely, to "eliminate blight" and to improve the neighborhood in accordance with the District of Columbia government's master plan. 396 F. Supp. at 1236. Thus, because the supposed conflict with *Alexander* and *Caramico* rests on the petitioners' assertion that all three cases involve "involuntary" acquisitions (Pet., p. 10), there is in fact no conflict.

In short, while the result in the instant case differs from the results in *Alexander*, *Caramico* and *Harris*, the standards adopted by the Second, Seventh and Eighth Circuits in no way bar the tenants in this case from receiving Relocation Act benefits. There is accordingly no conflict among the circuits necessitating review by the Court.

---

[7]See n. 2, p. 2, *supra*, discussing the treatment this finding received from the dissenting judge in the Court of Appeals.

CONCLUSION

For each of the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN VANDERSTAR
THEODORE VOORHEES, Jr.
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006
Attorneys for Respondents

Of Counsel:

FLORENCE WAGMAN ROISMAN
National Housing Law Project
1025 Fifteenth Street, N.W.
Washington, D.C. 20005

ADELAIDE MILLER
Neighborhood Legal
Services Program
616 Portland Street, S.E.
Washington, D.C. 20032

June 1978

ATTACHMENT A

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES ATTORNEY
WASHINGTON, D.C. 20001
MARCH 2, 1978

ADDRESS ALL MAIL TO:
UNITED STATES ATTORNEY
ROOM 3138-C
UNITED STATES COURT HOUSE BUILDING
3RD AND CONSTITUTION AVENUE NW

IN REPLY, PLEASE REFER TO
INITIALS AND NUMBER

EJS: NDibad

Florence Wagman Roisman, Esq.
National Housing Law Project
Suite 500
1025 - 15th Street, N.W.
Washington, D.C. 20005

Re: *Cole* v. *Harris*

Dear Ms. Roisman:

The Department of Housing and Urban Development has requested that our office inform you that HUD and the National Capital Housing Authority have amended the agreement for the sale of Skytower Apartments to provide for the return of the thirty-seven former Skytower tenants who did not exercise their option to return pursuant to the preliminary injunction of the District Court. A copy of the amendment to the agreement is enclosed.

HUD and NCHA are willing to provide, upon rehabilitation of the units at Skytower, for the return of any former tenants who left as a result of HUD's notice to vacate and who wish to return, provided they agree to return as units of appropriate size at Skytower become available for occupancy. We believe that it would be appropriate for you to meet with representatives of HUD and NCHA to develop a procedure for notifying these former tenants of this opportunity and to make arrangements for their return. We suggest that you telephone Stuart Malmon,

Esq., Office of the Area Counsel, HUD (673-5897) to arrange a meeting.

Sincerely yours,
EARL J. SILBERT
United States Attorney
By: /s/ ROBERT N. FORD
Chief, Civil Division

Enclosure
cc: (w/encl.)

Michael S. Levy, Esq.
Asst. Corporation Counsel
District Building
Washington, D.C. 20004

Stuart Malmon, Esq.
Office of Area Counsel
Department of H.U.D.
1875 Connecticut Ave., N.W.
Washington, DC 20009

Sally Watts, Esq.
Office of General Counsel
Department of H.U.D.
Washington, D.C. 20410

Charles Biblowit, Esq.
Appellate Section
Land & Natural Resources Division
Department of Justice
Washington, D.C. 20530

Adelaide M. Miller, Esq.
Neighborhood Legal Services
3016 Martin Luther King, Jr., S.E.
Washington, D.C. 20032

AMENDMENT TO AGREEMENT FOR ACQUISITION OF SKYTOWER APARTMENTS

The agreement between the Department of Housing and Urban Development (hereafter referred to as "HUD") and the National Capital Housing Authority (hereafter referred to as the "Authority") for the transfer of Skytower Apartments from HUD to the Authority is hereby amended as follows:

1. The reference to 221(d)(3) of the National Housing Act in the second introductory clause and in subsection 2b and c are deleted and 221(d)(4) of the National Housing Act is substituted therefor.

2. Consistent with the previously expressed position of the Authority, HUD will resist any attempt to force HUD to lease additional units at Skytower to former tenants before passage of title from HUD to the Authority. However, if for any reason HUD does lease such additional units to former tenants, or if the Authority must accept former tenants into Skytower before rehabilitation is completed, HUD will bear all costs of relocation of these families where such relocation is necessary for rehabilitation by the Authority pursuant to the Agreement. The Authority agrees to use its best efforts to execute its rehabilitation program in such a way as to minimize the need for any such relocation and to the extent possible, to limit such relocation to no more than one move per family.

3. HUD will not move any persons not formerly tenants of Skytower into the project.

4. HUD and the Authority agree to offer all former Skytower tenants the opportunity to move back to Skytower as units become accepted for occupancy by D.C. inspectors following the rehabilitation.

However, if notwithstanding this offer it becomes necessary after rehabilitation to hold any units vacant while a court or HUD gives former tenants an opportunity to move back to the project, HUD will pay to the Authority the difference between the amount authorized under Section 8 ACC and the full rent for those units during such period.

This amendment dated as of the [January 31] day of January, 1978.

The Department of Housing and Urban Development
By: /s/ Thomas R. Hobbs,
Acting Area Director
HUD Washington, D.C.
Area Office
National Capital Housing Authority
By: /s/ Lorenzo W. Jacobs, Jr.,
Director
D.C. Department of Housing and Community Development
National Capital Housing Authority

ATTACHMENT B

MEMORANDUM
U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

Date: Mar 13

TO : Mr. Thomas Hobbs
Director, D.C. Area Office

FROM : Marilyn Melkonian
Insured & Direct Loan Programs

SUBJECT: Return of the Jarrells Family
to Tenancy at Congress Park

IN REPLY REFER TO:

The Office of General Counsel has drafted the attached letter to the manager of Congress Park with the explicit intention of limiting the availability of such treatment to the *Cole* litigation. Since there is no express authority for subsidizing rentals on a case-by-case basis, even in HUD-owned housing, it is an accommodation extended to *Cole* plaintiffs because of the present posture of the litigation; i.e., they have prevailed in the Court of Appeals and our decision to seek certiorari is not an attempt to deny them all the relief to which they would otherwise be entitled. Since HUD does not contest that when the case is finally decided, plaintiffs will, at the least, be provided safe and sanitary housing at no more than 25 percent of family income as rent, we agree to place the Jarrells at Congress Park at that rental until an apartment is ready at Skytower.

Unless the attached draft poses problems which you feel we must discuss further, I would appreciate your preparing the attached draft in final for the appropriate signature at the Area Office level. Please do what you can to expedite

the return of the family to the unit from which they were evicted. Unless the unit has suffered damage since the family vacated, the unit must be returned to them in its present condition.

In addition, the previous rent arrearages have not been forgiven. I would like your recommendations concerning suitable repayment provisions. In the meanwhile, the existence of the arrearage shall not be used as a reason for further eviction. Future rent arrearages may, however, be considered as grounds for eviction.

/s/ Marilyn Melkonian
Deputy Assistant Secretary

Attachment.

Supreme Court, U. S.
FILED
JUN 14 1978
MICHAEL RODAK, JR., CLERK

No. 77-1463

In the Supreme Court of the United States

OCTOBER TERM, 1977

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

v.

SADIE E. COLE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY MEMORANDUM FOR PETITIONERS

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1463

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

v.

SADIE E. COLE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY MEMORANDUM FOR PETITIONERS

---

1. Respondents are wrong in suggesting (Br. in Opp. 6-8) that the decision below no longer has practical significance. While it is true that the Department has been seeking ways to reduce the disruptive effects of relocation on the tenants in this case and on tenants in low-income housing projects generally, the decision below interferes with the Department's ability to devise an appropriate scheme of relief programs. The Relocation Act imposes strict requirements governing the circumstances under which relocation can be ordered and the benefits that must be provided to statutory "displaced persons." If the decision below stands, the Department will not have the flexibility it deems necessary to devise relief programs that fit the varying circumstances that may arise in the course of agency project terminations, because it will be limited

to either meeting the requirements of the Relocation Act or continuing the projects indefinitely. Moreover, the importance of the decision below extends beyond its impact on the Department of Housing and Urban Development. The interpretation of the Relocation Act by the court of appeals in this case applies to relocations for programs undertaken by any federal agency or by state or local agencies with federal financial assistance.

2. Respondents accuse us of "an important misstatement" in describing the Department's acquisition of Sky Tower as "involuntary" (Br. in Opp. 2 n. 2), and they go on to argue (*id.* at 10-12) that the supposedly voluntary nature of the acquisition here distinguishes this case from the facts presented to the Seventh Circuit in *Alexander* v. *U.S. Department of Housing and Urban Development*, 555 F. 2d 166, petition for a writ of certiorari pending, No. 77-874, and to the Second Circuit in *Caramico* v. *Secretary of the Department of Housing and Urban Development*, 509 F. 2d 694 (C.A. 2). Contrary to respondents' suggestion, the district court here did not make a finding "that HUD's acquisition of Sky Tower was not 'involuntary' " (Br. in Opp. 2 n. 2; see also *id.* at 12: "[T]he District Court expressly found that the foreclosure-transfer to HUD was not 'involuntary' * * *"). This is a characterization by respondents of the district court's recitation of the facts (389 F. Supp. 99, 101). We take issue with that characterization, not with the facts as found by the district court.

The undisputed facts showed that after two contractors had defaulted in their rehabilitation efforts, the mortgagee insisted on a second increase in the Department's mortgage insurance guarantee. The Department declined to authorize the increase and the mortgagee thereupon declared the owner in default and exercised its rights under the mortgage insurance contract. Those rights

entitled the mortgagee to convey title to the project to the Department in exchange for the mortgage insurance benefits.

To be sure, the Department might have been able to forestall foreclosure—and its consequent acquisition of the project—by continuing to increase its mortgage insurance obligation. In that context, the district court stated that the Department "insisted that the property be foreclosed" (389 F. Supp. at 101). But the district court did not find, that the Department's acquisition of Sky Tower in these circumstances was "not 'involuntary'."

Such a characterization of the Department's acquisition, moreover, provides no principled basis for distinguishing the facts in this case from those in *Alexander* or *Caramico*. No reason appears why the availability of Relocation Act benefits should turn on whether the mortgagee requests an increase in the mortgage insurance guarantee before foreclosing on the project.

In *Alexander*, which respondents cite as an example of an "involuntary" acquisition (Br. in Opp. 11), the Department obtained title to the project by bringing its own foreclosure action in the face of the mortgagor's continuing default. 555 F. 2d at 167. Since the Department had the option of refraining from foreclosure and continuing to suffer the mortgagor's default, the acquisition could be considered "voluntary" in the same sense that respondents contend the acquisition of Sky Tower was "voluntary." Indeed, since the Department acquired title to the project in *Alexander* through its own action rather than automatically in response to action by the mortgagee, the acquisition in *Alexander* could be said to be even more "voluntary" than the acquisition in the present case.

Similarly, the court in *Caramico* made it clear that by referring to "involuntary" acquisitions, it meant to refer generally to acquisitions of properties under mortgage insurance programs after default and foreclosure. 509 F. 2d at 698-699. Because such an acquisition occurs in response to a default and represents "a failure of the [agency] program rather than its desired result," the acquisition, according to the *Caramico* court, is "clearly involuntary." *Id.* at 699.

3. In denying that the decision below conflicts with *Alexander* or with the Eighth Circuit's decision in *Harris* v. *Lynn*, 555 F. 2d 1357, affirming 411 F. Supp. 692 (E.D. Mo.), certiorari denied, October 31, 1977 (No. 77-5233), respondents contend that neither of those cases "turned on the existence of a time lag between acquisition and notice" (Br. in Opp. 9). This argument is based on a mischaracterization of our position with respect to the "written order" clause of 42 U.S.C. 4601(6). Our position does not require simultaneity between the written order to vacate and the acquisition. We argue, rather (see Pet. 11-14), that in order for a person to be "displaced" within the meaning of the written order clause, as reflected in both the language and the legislative history of Section 4601 (6), it is necessary that the written order be issued in connection with an acquisition or an anticipated acquisition, whether or not there is a "time lag" between the two events.[1]

---

[1] *Alexander* and *Harris* both support this interpretation of the written order clause. See *Alexander*, *supra*, 555 F. 2d at 170: "Thus, persons displaced by such programs are persons displaced by governmental activities involving the acquisition of land * * *"; *Harris*, *supra*, 411 F. Supp. at 695: "[T]he fact remains that plaintiffs were not displaced as a result of the government's alleged 1955 'acquisition' of ownership." Both decisions are therefore in conflict with the decision below, which held that there is no need for such a nexus between the order to vacate and the acquisition (see Pet. App. 9A-10A).

4. Respondents also seek to reduce our argument to the claim that "the statute applies only to displacements for construction projects, thereby excluding displacements due to demolition" (Br. in Opp. 9). In fact, we contend (Pet. 14-15) that the demolition in this case was not within the reach of the Relocation Act because the Department of Housing and Urban Development did not acquire the property for the purpose of a federal program or project. Under a proper construction of the statute, we argue, it is the agency's acquisition—not simply its order to vacate—that must be for the purpose of a federal program or project.[2]

In addition to this mischaracterization, respondents err in contending (Br. in Opp. 11-12) that the *Alexander* case does not conflict with the decision below because the Seventh Circuit concluded that the demolition of the project in that case, unlike the proposed demolition of Sky Tower, was not a "program or project" within the meaning of 42 U.S.C. 4601(6). As we pointed out in the petition (Pet. 9 n. 4), this purported distinction does not reflect any realistic difference between the two cases, since any demolition of a housing project is presumably intended to "eliminate blight" and otherwise serve the ultimate interests of the community.[3]

---

[2]See, *e.g.*, 42 U.S.C. 4622(a), the operative section of the Act providing for the payment of moving and related expenses: "Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person * * *."

[3]In seeking to distinguish the *Harris* case, respondents assert, without support, that the court in that case was interpreting the "acquisition" clause rather than the "notice" clause of 42 U.S.C. 4601(6) (Br. in Opp. 9). The much more natural reading of the court's decision in *Harris* is that Relocation Act benefits are available only to persons who move in connection with a federal acquisition, whether or not as the result of a written order of the acquiring agency. On this reading, the *Harris* decision is squarely in conflict with the decision below.

CONCLUSION

For the reasons stated above and in our petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JUNE 1978.

DOJ-1978-06

Supreme Court, U. S.
FILED
NOV 24 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978

No. 77-1463

PATRICIA ROBERTS HARRIS
SECRETARY OF THE DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT, *et al.*,
Petitioners,

v.

SADIE E. COLE, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

MOTION TO DISMISS THE WRIT AS IMPROVIDENTLY GRANTED

Of Counsel:
FLORENCE WAGMAN ROISMAN
National Housing Law Project
1016 - 16th Street, N.W.
Suite 800
Washington, D.C. 20036

ADELAIDE MILLER
Neighborhood Legal Services Program
3016 Martin Luther King Avenue, S.E.
Washington, D.C. 20032

JOHN VANDERSTAR
THEODORE VOORHEES, JR.
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006
Attorneys for Respondents.

Nobermber 24, 1978

THE CASILLAS PRESS, INC.–1717 K Street, N. W.–Washington, D. C.–223-1220

IN THE

Supreme Court of the United States

October Term, 1978

No. 77-1463

PATRICIA ROBERTS HARRIS
SECRETARY OF THE DEPARTMENT OF
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Petitioners.

v.

SADIE E. COLE, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

MOTION TO DISMISS THE WRIT AS IMPROVIDENTLY GRANTED

Respondents Sadie E. Cole, *et al.* hereby move that this Court dismiss the writ of certiorari as improvidently granted on the ground that new legislation, and likely administrative action in response to it, will virtually eliminate any practical significance a decision on the merits of this case might have. Because the new legislation requires petitioner Harris, who is Secretary of Housing and Urban Development ("HUD"), to report on new policies by January 31, 1979, the Court may wish to defer ruling on this motion (and also defer argument on the merits, now

scheduled for December 5, 1978) until after the Secretary's report is submitted and can be evaluated.

STATUTE INVOLVED

Sections 203(a), 203(d) and 902 of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, provide as follows:

> "Sec. 203(a) It is the policy of the United States that the Secretary of Housing and Urban Development (hereinafter referred to as the 'Secretary') shall manage and dispose of multifamily housing projects which are owned by the Secretary in a manner consistent with the National Housing Act and this section. The purpose of the property management and disposition program of the Department of Housing and Urban Development shall be to manage and dispose of projects in a manner which will protect the financial interests of the Federal Government and be less costly to the Federal Government than other reasonable alternatives by which the Secretary can further the goals of
>
> (1) preserving the housing units so that they can remain available to and affordable by low- and moderate-income families;
>
> (2) preserving and revitalizing residential neighborhoods;
>
> (3) maintaining the existing housing stock in a decent, safe, and sanitary condition;
>
> (4) minimizing the involuntary displacement of tenants; and
>
> (5) minimizing the need to demolish projects.
>
> The Secretary, in determining the manner by which a project shall be managed or disposed of, may balance competing goals relating to individual projects in a

manner which will further the achievement of the overall purpose of this section."

* * *

"Sec. 203(d)(1) Whenever tenants will be displaced as a result of the disposition of, or repairs to, a multifamily housing project owned by the Secretary, the Secretary shall identify tenants who will be displaced, and shall notify all such tenants of their pending displacement and of any relocation assistance which may be available.

(2) The Secretary shall seek to assure the maximum opportunity for any such tenant —

(A) to return, whenever possible, to a repaired unit;

(B) to occupy a unit in another multifamily housing project owned by the Secretary;

(C) to obtain housing assistance under the United States Housing Act of 1937; or

(D) to receive any other available relocation assistance as the Secretary determines to be appropriate."

* * *

"Sec. 902 The Congress declares that in the administration of Federal housing and community development programs, consistent with other program goals and objectives, involuntary displacement of persons from their homes and neighborhoods should be minimized. In furtherance of the objective stated in the preceding sentence, the Secretary of Housing and Urban Development shall conduct a study on the

nature and extent of such displacement, and, not later than January 31, 1979, shall report to the Congress on recommendations for the formulation of a national policy to minimize involuntary displacement caused by the implementation of the Department's programs, and to alleviate the problems caused by displacement of residents of the Nation's cities due to residential and commercial development and housing rehabilitation, both publicly and privately financed. In carrying out such study, the Secretary shall (1) consult with representatives of affected public interest groups, government, and the development and lending industries; (2) provide data on the nature and scope of the displacement problem, both past and projected, and identify steps needed to improve the availability of such data; and (3) report fully on the current legal and regulatory powers and policies of the Department to prevent or compensate for displacement caused by its own programs."

STATEMENT

The issue in this case is whether Title II of the Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (1971) ("Relocation Act"), requires the payment of benefits and the provision of other services to tenants who are evicted from a housing project that has been acquired by the Federal Government, following the default of a Federally insured mortgage. The Court below ruled in favor of the tenants, respondents here, while the Court of Appeals for the Seventh Circuit ruled against the tenants in *Alexander v. Patricia Roberts Harris, Secretary of the Department of Housing and Urban Development, et al.*, No. 77-874, with which this case is consolidated for argument.

In its petition for a writ of certiorari in this case, the Government pointed to the different rulings of the two courts of appeals and also urged that this issue had "considerable practical significance" to HUD in distinguishing between evicted tenants who are eligible for Relocation Act relief and those who are not covered by the Act. (Pet., p. 10)

The Government recognizes, however, that evicting low-income tenants from their homes without complying with the Relocation Act — notably by not assuring that there is decent, affordable replacement housing available — works a severe hardship on families who are in a poor position to find and afford suitable shelter. In its brief on the merits, the Government observed that the Secretary is working to relieve these hardships by searching for ways to supply the services contemplated by the Relocation Act in cases in which HUD believes the Act does not apply:

> "The Department recognizes, of course, that persons displaced from government property may suffer greatly by virtue of displacement. The Secretary of Housing and Urban Development is now examining measures that would provide some level of benefits to persons who are required to move from a Department-owned housing project but who do not qualify for benefits under the Department's interpretation of the Relocation Act. She is considering whether the Department can provide such assistance by regulation under existing program statutes or whether it must seek new legislation and authorization for funding. The appropriate eligibility criteria and levels of assistance for each kind of displacement are also under study." (Gov't Br., pp. 62-63)

As we pointed out in our brief in opposition to the petition for certiorari, the Secretary had already (a) acted to

alleviate the hardships suffered by some of the displaced tenants in this case and (b) determined that decisions to demolish unsuccessful housing projects — which is what led to the tenants' eviction in this case — would in the future occur only rarely, on the personal approval of the Secretary. (Br. in Opp., pp. 5-8)

Congress has now acted in a way that reduces still further the likelihood that a decision on the merits in this case will have any practical significance. Sections 203(a) and (d) of the Housing and Community Development Amendments of 1978, Pub. L. 95-557, ____ Stat. ____ (1978) ("1978 Housing Act"), which was signed by the President on October 31, 1978, will have the effect of requiring HUD to make every effort:

— (i) to minimize the number of displacements that will be caused under circumstances where the Government acquires property following mortgage defaults, and

— (ii) to provide maximum appropriate relocation assistance and relief to displaced persons deemed by HUD to be outside the protection of the Relocation Act.

Thus, Section 203(a) states that HUD's "property management and disposition program" — under which the tenants in this case were evicted — must be operated hereafter in a manner that furthers the goals of, *inter alia*,

> "(4) minimizing the involuntary displacement of tenants; and
>
> (5) minimizing the need to demolish projects."

Section 203(d) then provides, as to all tenants displaced from multifamily housing projects "owned by the Secretary," that HUD "shall seek to assure the maximum opportunity for any such tenant —

> "(A) to return, whenever possible, to a repaired unit;
>
> (B) to occupy a unit in another multifamily housing project owned by the Secretary;
>
> (C) to obtain housing assistance under the United States Housing Act of 1937; or
>
> (D) to receive any other available relocation assistance as the Secretary determines to be appropriate."

With respect to the provision of relocation assistance in Section 203(d)(2)(D), the conference report makes clear that in determining the appropriate level of relocation assistance in specific instances, HUD will be required to consider "both the need and the income of the displaced tenants." H.R. Rep. No. 95-1792, 95th Cong., 2d Sess. 69 (1978).

Moreover, Section 902 of the Act directs the Secretary to report to the Congress by January 31, 1979, her recommendations for a "national policy" (i) "to minimize involuntary displacement caused by the implementation of the Department's programs" and (ii) "to alleviate the problems caused by displacement" of tenants who occupy both publicly and privately financed housing in such circumstances.

We believe the Secretary's report under Section 902 will show that relocation services and benefits will be made available to all tenants who are displaced by HUD action, whether or not the Relocation Act is deemed applicable. We believe this is foretold by the statement of the Secretary's intentions which is contained in the Government's brief (quoted above). We believe this is also foretold by a recent HUD action making available to tenants displaced by the Section 312 Rehabilitation Loan Program "relocation assistance at levels substantially comparable to

those of the Uniform [Relocation] Act" if the Act does not apply. Letter by Robert Embry, HUD Assistant Secretary for Community Planning and Development, to HUD Regional Administrators, July 11, 1978.[1]

In short, we believe that the Secretary will soon act in such a manner that will eliminate or at least minimize the difference between situations where the Relocation Act applies and situations where it does not apply. The question for decision in this case will thus have lost practical significance. Therefore, it is respectfully submitted that this case no longer presents "an important question of federal law" which should be settled by this Court. Sup. Ct. R. 19(1)(b). The writ of certiorari should accordingly be dismissed as improvidently granted. See *Triangle Improvement Council* v. *Ritchie*, 402 U.S. 497, 497-502 (1971) (Harlan, J., concurring); *Rice* v. *Sioux City Cemetery*, 349 U.S. 70, 77 (1955) (writ dismissed where, per Frankfurter, J., "time may further illumine or completely outmode the issues in dispute").

It may be urged in opposition that dismissal would be premature if it were based to any substantial extent on projections of what administrative policy is likely to be. While it is not presently possible to measure the precise extent to which HUD will in fact adopt the policies set forth above, an adequate basis for such a determination will be presented on January 31, 1979, the date the Secretary is obligated by Section 902 of the 1978 Housing Act to make her report to Congress. Accordingly, the Court may wish to postpone oral argument on the merits, presently set for

---

[1] HUD had previously begun according Relocation Act levels of relief to tenants in certain Section 8 projects who are displaced from their homes under circumstances where — in HUD's view — the Relocation Act would not apply. 24 C.F.R. § 881.309(b), 43 Fed. Reg. 4242 (January 31, 1978).

December 5, 1978, and give this motion further consideration after the parties have had sufficient time to review the Secretary's report and advise the Court of its content and significance.

WHEREFORE, respondents request that the writ be dismissed as improvidently granted or, in the alternative, that oral argument be postponed and, after petitioner Secretary of Housing and Urban Development submits her report pursuant to Section 902 of the 1978 Housing Act, the parties be given an opportunity to provide further information and argument on whether the writ should be dismissed.

Respectfully submitted,

Of Counsel:
FLORENCE WAGMAN ROISMAN
National Housing Law Project
1016 - 16th Street, N.W.
Suite 800
Washington, D.C. 20036

ADELAIDE MILLER
Neighborhood Legal Services Program
3016 Martin Luther King Avenue, S.E.
Washington, D.C. 20032

JOHN VANDERSTAR
THEODORE VOORHEES, JR.
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006
Attorneys for Respondents.

November 24, 1978

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

No. 77-874

GENANETT ALEXANDER, ET AL.,

Petitioners,

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONSE OF PETITIONERS IN ALEXANDER V. UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO RESPONDENTS' MOTION TO DISMISS THE WRIT AS IMPROVIDENTLY GRANTED IN HARRIS V. COLE.

On June 19, 1978, this Court granted the writs of certiorari in the cases of Alexander v. United States Department of Housing and Urban Development, No. 77-874 and Harris v. Cole, No. 77-1463, and consolidated the cases. Each of the cases raises the issue of whether Title II of the Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (1971)("Relocation Act"), requires the Secretary of the Department of Housing and Urban Development (HUD) to pay benefits and provide assistance to those persons who are evicted from their housing after it has been acquired by the Federal Government, following the default of a federally insured mortgage. The United States Court of Appeals for the District of Columbia Circuit held that the tenants were entitled to Relocation Act benefits whereas the United States Court of Appeals for the Seventh Circuit found

10/

that they were not.

The Respondents in Harris v. Cole have filed a Motion to Dismiss the Writ as Improvidently Granted, and it is quite apparent that the interests of the tenants in Alexander v. HUD are in conflict with the interests of the tenants in Harris v. Cole. For this reason, the Alexander petitioners find it imperative to respond to the Motion to Dismiss, and to make it clear to the Court that:

a) they do not join in the motion, but rather oppose it;

b) the motion, if granted, should be directed only to the case of Harris v. Cole; and

c) if the Court decides that new federal legislation mandates a change in the course of these cases, there are more appropriate options available other than dismissal which better serve the interests of all parties.

The first two points arise from the obvious fact that dismissal of the writs of certiorari would help only the Cole tenants. They would then be in a position of obtaining benefits regardless of the action that HUD ultimately takes under the Housing and Community Development Amendments of 1978, Pub. L. 95-557, __Stat.__ (1978) ("1978 Housing Act") which became effective on October 31, 1978. The only remaining issue for the Cole tenants would be whether they are entitled to relocation benefits under the Relocation Act or under some other HUD authorization (or both if the non-Relocation Act benefits would leave them with less than the benefits available under the Relocation Act).

On the other hand, dismissal of the writs in each case will leave unsettled a significant conflict between the circuit courts of appeal over the scope of the Relocation Act. This conflict involves the important question of whether persons who reside on previously acquired government property who are ordered to vacate that property for a federal program or project are

"displaced persons" within the meaning of the Relocation Act, and thus entitled to the Act's benefits and services. Hence, even if the Cole Respondents are correct in their projection that HUD will, in the future, begin to provide some assistance to persons whom it displaces, Alexander v. HUD retains considerable practical significance both to the government, generally, and to persons who are displaced by the government.

With respect to the third point, the highly speculative effects of the 1978 Housing Act make dismissal of the writs particularly inappropriate. The 1978 Housing Act provides, inter alia, that it is the policy of the United States that HUD manage and dispose of multi-family housing projects which are owned by the Secretary of HUD "in a manner consistent with the National Housing Act" and:

> . . . in a manner which will protect the financial interests of the Federal Government and be less costly to the Federal Government than other reasonable alternatives by which the Secretary can further the goals of
>
> > (1) preserving the housing units so that they can remain available to and affordable by low- and moderate-income families;
> > (2) preserving and revitalizing residential neighborhoods;
> > (3) maintaining the existing housing stock in a decent, safe and sanitary condition;
> > (4) minimizing the involuntary displacement of tenants; and
> > (5) minimizing the need to demolish projects.

Section 203(a). Further, Section 203(d)(1) requires the Secretary to identify those tenants who will be displaced and to provide any relocation assistance which is now authorized by law. Further, Section 902 requires the Secretary to report to Congress "on the current legal and regulatory powers and policies of the Department to prevent or compensate for displacement caused by its own programs."

Significantly, nothing in this legislation mandates that the

regard, the instant situation is quite different from the cases cited by the Cole tenants to show how the intervention of a new statute may justify dismissal of cases after a writ of certiorari has been granted. One involved a new act which repealed the act which the Court was about to interpret. Triangle Improvement Council v. Ritchie, 402 U.S. 497 (1971) (Harlan, J., concurring). The other involved a new act which prospectively prevented the recurrence of actions challenged in that case. Rice v. Sioux City Cemetery, 349 U.S. 70 (1955).

If the Court finds that the 1978 Housing Act might have some effect upon these cases, we urge that a more appropriate avenue is the alternative suggested by the Cole motion -- delaying the argument or the decision until after the Secretary of HUD files her report to Congress on January 31, 1979.

Because the 1978 Housing Act requires only a report (and does not establish a deadline for official HUD action), the status of these cases may be no clearer after January 31, 1979 than they are today. Thus, it may be appropriate to vacate the lower court decisions in Harris v. Cole and Alexander v. HUD and remand them to the district court to make the first determination of the effect of the new legislation on these cases. This would be entirely consistent with this Court's policy of not deciding matters in the first instance before the lower courts have had an opportunity to consider them. Stanton v. Bond, 429 U.S. 973 (1976); Fusari v. Steinberg, 419 U.S. 379 (1975).

WHEREFORE, the Alexander tenants request that the Cole tenants' Motion to Dismiss be denied. In the alternative, the Alexander tenants pray that the dismissal be directed only to the Cole case or that the decisions below in each of the cases be vacated and remanded to the respective district courts to consider the question of the effect of the 1978 Housing Act upon these cases. Finally, the Alexander tenants pray that if the Motion to Dismiss has not been ruled upon by this Court prior to argument on December 5, 1978,

Relocation Act apply to those persons displaced by HUD. Nonetheless, the Cole tenants predict that HUD will reverse its previous and current positionson the applicability of the Relocation Act or at least will submit a report which will show "that relocation services and benefits will be made available to all tenants who are displaced by HUD action, whether or not the Relocation Act is deemed applicable." The Cole tenants find great promise in a quite limited January, 1978 HUD regulation and a July, 1978 letter of an Assistant Secretary (which we have not seen) when they predict that HUD's forthcoming report will identify broad powers and a commitment to use them. The Alexander tenants foresee a much bleaker report when they consider HUD's threat to evade a decision of this Court should it find that the Alexander and Cole tenants are covered by the Relocation Act. See, e.g. HUD Brief, p. 62; HUD Petition for Writ of Certiorari in Harris v. Cole, No. 77-1463, p. 17). HUD's failure to offer even a modicum of relief to the Alexander tenants during the pendency of this case, and HUD's continuing failure to provide assistance to those displacees who are not eligible for Relocation Act benefits is striking evidence of HUD's policy based on its current statutory authority. See, e.g. Moore v. United States Department of Housing and Urban Development, 561 F.2d 175 (8th Cir. 1977, cert. den. U.S. 46,L. W. 3722 (May 22, 1978); Conway v. Harris, No. 78-1463 (7th Cir., Nov. 13, 1978); Dawson v. Department of Housing and Urban Development, 428 F. Supp. at 328 (N.D. Ga. 1976), appeal pending (C.A. 5, No. 77-1382).

Regardless of whose crystal ball is more accurate, the important point is that the effects of the 1978 Amendments upon the situation involved in this case are highly speculative. The Report of the Secretary to Congress will only be a report, not a commitment to act; and its scope, content, recommendations, and implementation are all unknown. Thus, the 1978 Housing Act creates no change in the applicability of the Relocation Act or in the treatment of those displaced from HUD-owned housing. And in this critical

and that if the Court wishes to have argument on the Motion at that time, that the Alexander tenants be granted a period of time to argue the Motion separately from John Vanderstar, Esq., counsel for the Respondents in Harris v. Cole, whom the Alexander tenants are otherwise authorizing to represent them in oral argument of these consolidated cases.

Respectfully submitted,

Richard L. Zweig

Paul A. Levy by R.L.Z.

Paul A. Levy
Legal Services Organization
of Indiana, Inc.
107 N. Pennsylvania St.
Suite 300
Indianapolis, Indiana 46204
(317) 639-4151

Attorreys for Petitioners

jac

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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1463

PATRICIA ROBERTS HARRIS,
SECRETARY OF THE DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT, *et al.*,
Petitioners,

v.

SADIE E. COLE, *et al.*,
Respondents.

On Petition For a Writ of Certiorari To the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS

JOHN VANDERSTAR
THEODORE VOORHEES, JR.
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006
Attorneys for Respondents

Of Counsel:

FLORENCE WAGMAN ROISMAN
National Housing Law Project
1025 Fifteenth Street, N.W.
Washington, D.C. 20005

ADELAIDE MILLER
Neighborhood Legal Services Program
3016 Martin Luther King Avenue, S.E.
Washington, D.C. 20032

September 5, 1978

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IN THE

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Petitioners,

v.

SADIE E. COLE, *et al.*,
Respondents.

On Petition For a Writ of Certiorari To the United States
Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS

Respondents, former tenants of a HUD-owned housing project, are filing this opening brief pursuant to an agreement with the Solicitor General, approved by the Court on July 7, 1978, to enable simultaneous filing with the displaced tenants who are petitioners in *Alexander, et al.* v. *U.S. Department of Housing and Urban Development, et al.*, No. 77-874, with which this case is consolidated, and likewise to enable the Solicitor General to file a single responsive brief covering both cases.

OPINIONS BELOW

The opinion of the Court of Appeals for the District of Columbia Circuit is reported at 571 F.2d 590 (1977) and is also reproduced as Appendix A to the petition for a writ of

certiorari. (pp. 1A-49A)[1] The opinion of the District Court (App. 86-88) (1975) is unreported.[2] Two prior opinions of the District Court are reported at 389 F. Supp. 99 (1975) and 396 F. Supp. 1235 (1975).

JURISDICTION

The judgment of the Court of Appeals was entered on November 14, 1977. On February 3, 1978 Mr. Justice Brennan extended the time within which the Solicitor General might file a petition for a writ of certiorari to and including April 13, 1978. The petition was filed on that date and granted on June 19, 1978. The Solicitor General invokes the jurisdiction of this Court under 28 U.S.C. § 1254 (1) (1976). On July 7, 1978 the time for filing opening briefs was extended to September 5, 1978.

QUESTION PRESENTED

When the Department of Housing and Urban Development acquires a subsidized housing project after default by the project's sponsor and, thereafter, HUD orders the tenants evicted so that it can, to eliminate blight, demolish the buildings and sell the property for construction of middle-income housing in accordance with the city's "master plan," are the evicted families "displaced persons" entitled to relocation services under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970?

STATUTE INVOLVED

Section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. § 4601(6), provides:

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[1]Citations to the Court of Appeals' decision will be to "571 F.2d at ____" and as well to the Appendix to the petition ("p. ____A").

[2]References to the Joint Appendix will be cited as "App. ____" to distinguish them from references to the Appendix to the petition for a writ of certiorari. References to portions of the record not reproduced in the Joint Appendix will be cited as "R. ____."

> "The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance;***"

STATEMENT OF THE CASE

Sky Tower is a multifamily housing project located in the Anacostia section of Washington, D.C. The project had been under wholly private ownership for some 20 years when, in 1968, it was considered for rehabilitation and inclusion in a new Federal housing program pursuant to Section 236 of the National Housing Act. (R. 21, Humphrey Aff. ¶¶3, 9) Upon inclusion in the program, Sky Tower would be owned and operated by Housing Development Corporation ("HDC"), a nonprofit corporation which had been formed in 1965 to promote the development of housing for low-income families in the District of Columbia. (Id. ¶¶ 5, 6)[3]

A. HUD Approval of the Rehabilitation Project

As is customary, Sky Tower was carefully inspected (on three occasions) by architects and appraisers of the Federal Housing Administration ("FHA"), the agency within the Department of Housing and Urban Development ("HUD") which is responsible for administering the Section 236

---

[3]HDC formed a subsidiary corporation, Anacostia No. One, Inc., (also nonprofit) to act as the formal holder of title and signatory to contracts. (App. 45) For convenience, reference herein will be to HDC alone, without distinguishing between it and its subsidiary.

program. (*Id.* ¶7 & Exh. B) FHA concluded that the 19 buildings in Sky Tower were suitable for rehabilitation. A factor of considerable importance to FHA was the intended conversion of Sky Tower's 217 units, most of which contained only one or two bedrooms, into 150 units to accommodate larger families; the acute shortage of housing for low-income families in the District of Columbia was especially dramatic for large families. (R. 7, Humphrey Aff. ¶4; R. 21, Humphrey Aff. ¶3; App. 44-45)

In 1969, HUD gave preliminary approval to the Sky Tower rehabilitation project, subject to HUD's approval of final architectural plans and other conditions. (App. 45) After negotiations between HDC and FHA over construction cost estimates and the like, HUD issued its final commitment under Section 236, and settlement occurred in May of 1971. (R.21, Humphrey Aff. ¶9 & App. B)

In approving Sky Tower for Section 236 rehabilitation, HUD agreed to provide three types of financial support. First, HUD agreed to insure a private mortgage loan for $2,962,800 to be made to HDC by a private lender to enable HDC to acquire the property and perform the rehabilitation work.[4] (*Id.*) In addition, HUD agreed to subsidize HDC so that it would end up paying as little as one percent interest on the loan. (12 U.S.C. § 1715z-1) Finally, HUD agreed to provide financial assistance to a number of tenants at Sky Tower by making "rent supplement payments" to HDC in amounts prescribed by FHA regulations. (R.21, Humphrey Aff. ¶6 & Exh. A)

Upon receiving HUD's approval of the Sky Tower rehabilitation, HDC acquired the property and executed a

[4]Although the original lender, Walker & Dunlop, sold the loan to Federal National Mortgage Association ("FNMA") pursuant to a commitment FNMA issued before settlement took place, Walker & Dunlop retained the responsibility to service the loan, as is customary, and is thus treated as the lender or mortgagee in this statement. (R.21, Humphrey Aff. App. B)

$1,415,275 construction contract (on an FHA form) for the rehabilitation work. (*Id.* ¶10)

B. Events That Led To HUD's Decision to Acquire Sky Tower

HDC's contractor defaulted in early 1972. A new contractor was retained after HUD agreed to increase its mortgage insurance commitment by $285,000 to cover increased costs. (*Id.* ¶¶ 11, 12)

Then, late in 1972, the second contractor, Cee Bee Contractors, Inc., stopped work. (*Id.* ¶ 13) At this time, all of the rehabilitation work was complete on eight buildings, approximately 50 percent of the work had been accomplished on three others, and work had not started on eight buildings. (*Id.* ¶29) In a separate action on the construction contract, Judge Sirica found that responsibility for the second contractor stopping work "rests squarely on the shoulders of FHA, whose unreasonable delays in processing Cee Bee's change order requests and whose obstinate refusal to grant the extensions of time made necessary by the defective work of the previous contractor frustrated Cee Bee's ability to complete the project." *Cee Bee Contractors, Inc.* v. *Anacostia No. One, Inc.*, No. 138-73 at 20 (D.D.C., filed Mar. 8, 1978).

HDC urged HUD to maintain its mortgage insurance, interest subsidy and rent supplement agreements in force. (R.7, Humphrey Aff. ¶9; R.21, Humphrey Aff. ¶¶17, 24 & Exh. C) HDC proposed that it act as its own general contractor, thus achieving some cost savings, and opined that it could finish the rehabilitation for less than the unexpended mortgage loan balance. (R.21, Humphrey Aff. ¶17) The lender and FHA, although not disagreeing with HDC's projections, estimated that the delay caused by interruption of the

work would mean that interest payments would be greater than originally expected and that, as a result, the loan balance would be $100,000 short of total costs. (*Id.* ¶¶ 19, 20) HDC, however, offered to put up that amount out of its $350,000 in working capital. (*Id.* ¶ 17) In March of 1973, the lender agreed to continue making advances on the loan if HUD would maintain its insurance and other commitments in force. (*Id.* ¶19 & Exh. D)

HUD refused to do so. Although FHA was responsible for the projected delay, HUD concluded that the estimated $100,000 cost overrun would increase the rents HDC would have to charge and that Sky Tower could no longer be operated successfully as a Section 236 project. (*Id.* ¶¶ 20-23 & Exh. E) HUD then exercised its rights under the mortgage insurance contract: It acquired the mortgage from the lender, foreclosed on the mortgage, and bought the property at the foreclosure sale. (*Id.* ¶ 26) As District Judge Gesell found, HUD "insisted that the property be foreclosed," 389 F. Supp. at 101.[5]

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[5]The Government did not challenge this finding in the Court of Appeals, and that court accordingly had no occasion to pass upon the finding under the standards laid down in FED. R. CIV. P. 52(a). Nevertheless, the dissenting judge concluded that HUD's foreclosure and acquisition of Sky Tower were "involuntary" in that it had no other alternative. In reaching this conclusion, the dissent stated that HDC "sought a *second* increase" in the loan commitment from HUD and that "presumably" the lender's willingness to continue with the project was conditioned on HUD agreeing to such an increase. (571 F.2d at 603; pp. 27A-28A) These statements are contradicted by the contemporaneous documents appended to the affidavit of Mr. Humphrey, the HDC official who was supervising the rehabilitation project. (R.21) Those documents were before Judge Gesell when he found on February 7, 1975 that HUD "insisted" on foreclosure. The dissenting judge relied exclusively on an affidavit filed July 18, 1975—after the District Court made its finding—of a HUD official who appears not to have had first-hand knowledge of the facts. Moreover, the HUD affidavit is squarely contradicted by a subsequent affidavit filed by Mr. Humphrey. (R.110)

HUD took title to Sky Tower in June of 1973 and contracted with a management firm to operate the property. (R.21, Humphrey Aff. ¶ 26) Meanwhile, HUD had begun to develop a "program for operation" of the property, looking to an ultimate disposition in accordance with its regulations governing the subject.[6]

C. Displacement of the Tenants

More than a year later, with no further rehabilitation work accomplished, there were 72 families still living in 8 of the 19 buildings at Sky Tower. (571 F.2d at 592; pp. 3A-4A; 389 F. Supp. at 101.) After conducting "protracted and detailed studies," HUD concluded that five alternative disposition plans were available, four involving variations on continuing the rehabilitation and the fifth requiring demolition for the development of single family homes. The demolition alternative was selected, and the land was to be "made available for sale to developers for the construction of single-family homes for the middle class." (389 F. Supp. at 101; 396 F. Supp. at 1236.)

On September 27, 1974 HUD sent registered letters ordering the Sky Tower tenants to vacate their apartments by November 1, 1974, because "The Department of Housing and Urban Development has decided to raze the Sky Tower Apartments Project." (App. 13) While HUD did undertake to provide assistance, including $300 in moving expenses, to certain of the departing tenants (*id.*), it did not comply with Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4621-38 (1970), *i.e.*, it neither assured the tenants that

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[6] (*Id.* ¶ 20) HUD PROPERTY DISPOSITION HANDBOOK — MULTIFAMILY PROPERTIES, RHM 4315.1 (Feb. 1971) (hereinafter "*Property Disposition Handbook.*")

decent, affordable replacement housing was available to them nor provided replacement housing payments to assist the tenants in paying higher rents. HUD's stated reason was its view that the tenants were not "displaced persons" within the meaning of the Act.

The consequence for many of Sky Tower's predominantly low-income tenants of being cast out in the District of Columbia's tight housing market was devastating. The affidavits which are part of the record in this case show that the rentals paid by some tenants more than doubled (App. 17, 61, 79); for some tenants the new rentals would exceed 50 percent of their income (App. 28, 56, 61). Tenants with children had particular difficulties finding new housing (App. 17-18, 20, 33) and in several cases had to settle for apartments with insufficient space, resulting in severe overcrowding (App. 40, 59).

D. The Litigation

Demolition began in December of 1974 and continued until stopped by a temporary restraining order Judge Gesell issued, after a hearing, on January 28, 1975; ten days later, the TRO was replaced by a preliminary injunction. 389 F. Supp. at 100. Judge Gesell found that HUD's decision to demolish Sky Tower was arbitrary and irrational and in violation of the agency's fundamental duty—indeed the principal reason HUD was created—to carry out the "national housing policy which Congress has developed, refined and implemented over a period of years by a series of enactments" 389 F. Supp. at 102. The sole criterion set forth in HUD's *Property Disposition Handbook, supra* —maximizing HUD's return on its investment—was held to be "an oversimplified and inappropriate premise." *Id.* Judge Gesell further declared that "Congress did not intend HUD to be a commercial lending agency." 389 F. Supp. at 103. He ruled that HUD's disposition of Sky Tower must im-

plement, not ignore, the national housing policy, and the disposition issue was remanded to HUD for reconsideration. *See* 396 F. Supp. at 1236-37. Judge Gesell found that issuing a preliminary injunction was necessary to stop all demolition, to maintain the property in livable condition insofar as possible, to permit tenants still at Sky Tower to remain there, and to give displaced tenants the opportunity to move back to their homes. Judge Gesell's action was in large part motivated by his finding, based on extensive affidavits, that "no comparable low-income housing of equal quality was available to any of the tenants at the time the demolition decision was made." 389 F. Supp. at 101.[7]

In another order, dated September 12, 1975, Judge Gesell ruled that the 55 tenants who vacated their apartments as a result of the registered letters dated September 27, 1974, were "displaced persons" within the meaning of the Act. (App. 86-88) That ruling was affirmed by the Court of Appeals, with one judge dissenting, in the decision under review here.

E. Events Subsequent to the Litigation

No Relocation Act assistance was provided to any of the tenants as a result of Judge Gesell's decision because his order provided for declaratory rather than injunctive relief. (App. 88) The decision of the Court of Appeals affirming Judge Gesell was, moreover, stayed on the Government's motion pending disposition of the case in this Court.

Meanwile, the case had been remanded to HUD, at its request, to enable it to reconsider its 1974 decision to

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[7]Judge Gesell found that the acute shortage of housing in the District of Columbia "has been particularly serious for low-income persons with large families, the very class Sky Tower serves." 389 F. Supp. at 101. The waiting list at the District's public housing agency was then "over 4,000 families, concentrated in the four-bedroom and larger category." According to Judge Gesell, only one other HUD-assisted project in the District "has any six-bedroom units whatsoever." *Id.*

demolish Sky Tower. Sometime in 1976, it arranged to transfer the property to the District of Columbia's public housing agency and to continue providing rent subsidies for the tenants. (571 F.2d at 594 n.17; p. 7A n.17) Additionally, rehabilitation of Sky Tower was to be resumed.

Eighteen of the 55 families who had moved as a result of the eviction notices moved back into Sky Tower after the District Court enjoined its demolition. (571 F.2d at 593; p. 6A) Presumably, more such families will be returning, for in early 1978 HUD and the District of Columbia agreed that all former Sky Tower tenants would be given a priority right to return, as apartments become available.[8] (Brief for Respondents in Opp., Att. A) A number of families who live in another HUD-owned project in the District of Columbia, Congress Park, may also achieve much of the relief they sought in this action. HUD has already agreed to lower the rent for one such family to the level it was paying at Sky Tower. (Brief for Respondents in Opp., Att. B) HUD is taking this step to avoid letting the Government's decision to seek certiorari deny the plaintiffs "all the relief to which they would otherwise be entitled" by reason of the decision below. (*Id.*)

HUD has also acted on a broader front to alleviate the distressing problems caused when low-income families are displaced in circumstances in which HUD takes the position that the services provided by the Relocation Act are not available. HUD has determined that demolition of low-income housing may not take place without the personal approval of the Secretary,[9] and instead such buildings must be repaired "unless there are compelling reasons not

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[8]Unfortunately, little real progress has been made. The transfer of title to the District of Columbia agency did not actually occur until July, 1978, and thus no contract for rehabilitation work could be awarded until that date.

[9]HUD MULTI-FAMILY PROPERTY UTILIZATION TASK FORCE, FINAL REPORT, April 1978, at viii.

to repair them."[10] These actions are consistent with HUD's policy decision that it should make every effort to avoid dispositions that would reduce the nation's already low stock of below-market-rent housing.[11]

Finally, the pertinent committees of both houses of Congress, in reports dated May 15, 1978, have urged that HUD keep to a minimum those actions which will result in displacement of families from their homes and take steps to alleviate the hardships that occur when such displacements are unavoidable.[12]

SUMMARY OF ARGUMENT

The statute defines "displaced persons" to include persons who, *inter alia*, move from their homes, businesses or farms when a government agency, having acquired the property, issues a "written order . . . to vacate . . . for a program or project undertaken by a Federal agency . . . ." The former Sky Tower tenants fall exactly within this definition. The Government contends that this "written order" clause applies only when the agency, in advance of acquiring the property, issues to the occupants a "written notice" to vacate. There is no such limitation in the statutory language. Moreover, the relocation regulations of the two agencies most heavily affected, HUD and DOT, are inconsistent with this interpretation. They show that, although relocation services are available when the agency issues a "written notice of intent" to acquire property, a "written order from the acquiring agency"—which presumably can be issued only after the acquisition takes place—also makes displaced tenants eligible for relocation services.

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[10] *Id.* App. A (Memorandum from the Commissioner of FHA dated April 5, 1978 at 1).

[11] *Id.* at *e.g.*, I, II-21, VI-2.

[12] S. REP. No. 871, 95th Cong., 2d Sess. 49-50 (1978); H.R. REP. No. 1161, 95th Cong., 2d Sess. 23 (1978).

The overall intent of the Relocation Act fully supports our interpretation of the definition of "displaced person." The Act was plainly intended, through the use of broad, nontechnical language, to cover every situation in which a government agency acquires land for some public purpose and, either immediately or thereafter, persons are displaced from their homes or businesses or farms. Congress, in enacting the Relocation Act, sought to bring together in one comprehensive statute a number of specific relocation provisions that formerly had provided different types of services in circumstances that varied from program to program.

Where the tenants who are displaced, like those here, rely on the "written order" branch of the definition of "displaced person," it is necessary that the order have been issued "for" a Federal program or project. That was the case here, because the tenants were displaced when HUD made the decision, after considering a variety of available alternatives, to demolish Sky Tower and transfer the property to private ownership so that middle-income homes could be constructed in accordance with the District of Columbia master plan for improvement of the Anacostia area. It is not necessary that this "program or project" be the same one that caused the acquisition. In fact, relocation services are available under the "written order" branch of the definition even if the acquisition was not for a Federal program or project, although in this case the acquisition was an expected consequence of a subsidized housing program adopted by the Congress in Section 236 of the National Housing Act, and the displacement was an integral part of the same program. Moreover, on the facts of this case, HUD plainly had a choice either to allow the rehabilitation of Sky Tower to continue—at no increase in cost to the Government—or to take over the project and consider some other disposition.

For the foregoing reasons, the tenants who were displaced when the Government decided to demolish Sky Tower are "displaced persons" within the meaning of the Relocation

Act and therefore entitled to relocation services. Moreover, Section 206(b) of the Act expressly provides, without regard to whether the tenants fall within the definition of "displaced person," that HUD was required to assure that suitable and affordable replacement housing was available before it evicted these tenants from their homes. HUD did not carry out this explicit statutory mandate, and it is reasonable and appropriate that HUD be required to make the tenants' loss good by moving them into suitable housing as promptly as possible and by reimbursing them for the excess rents they have had to pay in the meantime.

ARGUMENT

This case involves Title II (and the definitions in Title I) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-38 (1970) (the "Relocation Act" or simply the "Act"), which applies to all Federal agencies, including HUD.[13] The question presented by the Government's petition for certiorari is whether the former Sky Tower tenants are "displaced persons" within the meaning of the Relocation Act. Whether a tenant is a "displaced person" is very important to the tenant, typically a low-income family that meets great difficulty in finding—and affording—suitable replacement housing, especially in a city like Washington, D.C. A tenant who qualifies as a "displaced person" is entitled to

> —relocation assistance, which includes assurance that decent affordable replacement housing is actually available to the tenants, 42 U.S.C. §4625;[14]

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[13]Title II is codified as Subchapter II, "Uniform Relocation Assistance," of Chapter 61, Title 42, U.S. Code.

Title III of the 1970 Act, codified as Subchapter III, "Uniform Real Property Acquisition Policy," 42 U.S.C. §§ 4651-55, is not involved.

[14]As we show *infra*, pp. 34-35, the assurance that suitable replacement housing must be available is required whether or not the tenants meet the statutory definition of "displaced persons."

—where the only replacement housing available is at higher than affordable rentals, replacement housing payments to cover the difference (to a limit of $4,000), 42 U.S.C. § 4624; 24 C.F.R. § 42.95 (1977); and[15]

—moving expenses, 42 U.S.C. § 4622.

I. If the Government Acquires Real Property and Thereafter the "Acquiring Agency," Pursuant to a Federal Program or Project, Gives Tenants a "Written Order" To Vacate the Property, Tenants Who Then Move Are "Displaced Persons" and Entitled to Relocation Act Services.

To determine whether the former Sky Tower tenants are "displaced persons," one should begin with the language of the statute, for that is the primary aid to determining its meaning. *St. Paul Fire & Marine Ins. Co.* v. *Barry*, 46 U.S.L.W. 4971 (1978); *United States* v. *American Trucking Ass'ns*, 310 U.S. 534, 543 (1940). That language should be read as it is commonly understood "in the speech of people," to use Justice Jackson's phrase. *NLRB* v. *Highland Park Mfg. Co.*, 341 U.S. 322, 324 (1951). Where the resulting interpretation is neither absurd on its face nor inconsistent with the statute's evident purpose, the Court's task is ended. *Commissioner* v. *Brown*, 380 U.S. 563, 571 (1965).

Congress defined "displaced person" broadly, in conformance with the generous purpose that inspired the

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[15] A different mix of services is available when the "displaced person" is a homeowner rather than a tenant or where it is a business or farm, rather than a home, that is dislocated. *See* 42 U.S.C. §§ 4622(c), 4623, 4625(c)(4).

adoption of the Act. The definition is dual: A "displaced person" is one who "moves from real property" *either*

> [1] "as a result of the acquisition of such real property, in whole or in part,"

or

> [2] "as the result of the written order of the acquiring agency to vacate real property,"

when the displacement is "for a program or project undertaken by a Federal agency . . . ." Act, § 101(6), 42 U.S.C. § 4601(6).[16]

The tenants here rely on the second branch of the definition, the "written order" clause, and not on the first, the "acquisition" clause.[17] There must in either case be an acquisition, for even the "written order" clause applies only

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[16]The full text of Section 101(6) is:

> "The term 'displaced person' means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project."

[17]Both lower courts in this case decided in favor of the tenants on the basis of the "written order" clause. The decision in favor of the Government in the companion case, *Alexander* v. *HUD*, No. 77-874, was also based upon the "written order" clause. Decisions construing the "acquisition clause," which include Caramico v. Secretary of the Dep't of Housing and Urban Dev., 509 F.2d 694 (2d Cir. 1974), and Harris v. Lynn, 555 F.2d 1357 (8th Cir.), *cert. denied sub nom.* Harris v. Harris, 434 U.S. 927 (1977), are not especially pertinent here.

when the order to vacate is issued by "the acquiring agency," and in either case there must be "a program or project undertaken by a Federal agency."

There is no doubt that on June 15, 1973 HUD acquired "real property" (Sky Tower) and thus was the "acquiring agency," that on September 27, 1974 HUD gave each tenant a "written order" to vacate his or her apartment by November 1, and that the tenants who brought this lawsuit moved from their homes "as a result of" these orders. Accordingly, the tenants are "displaced persons" eligible for relocation services under the plain meaning of the Act.

Despite this common sense reading of the statute, the Government urges that the two branches of the definition of "displaced person" are to be read conjunctively rather than disjunctively. (Petition at 7) It contends, moreover, that the "written order" that results in displacement must be directly related or connected to the acquisition, *i.e.*, that the acquisition and order must be part of a single Federal program or project. Indeed, the Government goes further: It says that the "written order" referred to in the definition must be one that *precedes* acquisition. The Sky Tower tenants say otherwise—that if there is an acquisition and then, separately, a written order to vacate, relocation services are available as long as the order, at least, is pursuant to a Federal program or project.[18]

A. A "Written Order" Issued After the Government Acquires the Property Is Covered by the Statutory Definition.

The language and structure of the statute do not produce the result for which the Government contends, and the contemporaneous regulations of two key agencies directly refute that contention.

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[18]We would suppose that the acquisition would also be pursuant to a Federal program or project. If that is important, we show in Part II, *infra*, that the acquisition of Sky Tower meets this condition.

There is nothing on the face of the phrase "written order" which suggests that the order must be issued before an acquisition, and no court has so held. Had the Congress said that a displaced person is one who moves "as the result of an acquisition or a notice issued before acquisition," the Government would be right. But the Congress did not do so. One is displaced, says the language, if one moves "as a result of the acquisition" *or* "as the result of the written order of the acquiring agency."

There would be little need for a "written order" clause that applies before an acquisition takes place, for a displacement that precedes an acquisition but is caused by it is covered by the acquisition clause. *Lathan* v. *Volpe*, 455 F.2d 1111, 1124 (9th Cir. 1971).[19] Indeed, it is difficult to understand how a "written order" could be issued by "the acquiring agency" until there is an acquisition by the agency; before acquisition takes place, the agency has no authority to "order" tenants to move from the property.

On the other hand, there is utility in a post-acquisition written-order clause: In many cases, tenants will not vacate their homes because a transfer of title to the Government has taken place, and indeed the tenants may not know when that legal act occurs. In other cases, the Government acquires property before it is needed for a project, perhaps as a hedge against rising property values or to forestall inconsistent development,[20] and the tenants are not evicted

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[19]*Lathan* dealt with the common situation in which a proposed highway corridor has been formally designated as such but no property has yet been acquired, and indeed the project's design has not yet been approved. Those who reside in the area are permitted to make "hardship sales" to the State, rather than see their property decline in value during the years that may pass between corridor designation and condemnation. The court held that the hardship sales were covered by the acquisition clause and that, because of Federal financing of the highway project, Relocation Act services were available.

[20]The Corps of Engineers appears to follow this practice. *See* 52 Comp. Gen. 300 (Nov. 28, 1972). This may also be the case with respect to a fourth Senate office building.

until long after. In all of these cases, it could well be contended that the "acquisition" had not caused the displacement, and Sections 4622 and 4625 of the Act both say that relocation services are provided "Whenever the acquisition of real property . . . will result in the displacement of any person . . . ." The Congress, however, wrote a broad definition of "displaced person" to assure that it covered such post-acquisition evictions when they occur because of a "written order of the acquiring agency."[21]

There has been some confusion brought about by referring to the "written order" clause as a "written notice" clause.[22] The word "notice" could more easily carry the meaning for which the Government contends. But that is not the word used in the statute. The word is "order."

Moreover, the regulations of the two agencies principally affected by the Relocation Act—HUD and the Department of Transportation ("DOT")[23]—are in accord with our position. Displacements which qualify for Relocation Act services are those that result from:

(1) The Government acquiring "title to or the right to possession" of the property;

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[21]There is no doubt that the definition of "displaced person" was written to broaden the class of cases in which relocation benefits are payable. Even the Government's argument proves this, for the Government contends that displacements that result from a notice of intent to acquire, and not from an acquisition, are covered.

[22]This error has been commited both in briefs and in opinions. Thus, the dissenting judge in this case states that, "whether the acquisition or the *notice clause* is involved, the acquisition or *notice of proposed acquisition* must be an 'acquisition for a program or project.' " (571 F.2d at 609; p. 41A) (emphasis added). Even the majority refers to the "written notice" clause, although the clause was held to embrace both pre- and post-acquisition transactions. (571 F.2d at 595; p. 9A)

[23]*See, e.g.*, H R. REP. No. 1656, 91st Cong., 2d Sess., at 1-2 (1970) [hereinafter "*House Report.*"]

(2) The "written *order* from the acquiring agency to vacate" the property;

"*or*"

(3) The agency issuing a "written *notice*" to the owner of its "intent to acquire the property." (Emphasis added.)[24]

In other words, under these regulations relocation assistance must be provided if there is a "written notice" that the agency intends to acquire the property or a "written order" to vacate property already acquired. There would of course be no need for two separate clauses if they both mean the same thing, and therefore two different situations are envisioned by the regulations. (*Cf.* 571 F.2d at 597-98; pp. 13A-16A) We agree, and it was a written order to vacate, not a written notice of intent to acquire, that caused the tenants in this case to move from their homes.

B. Applying the "Written Order" Clause to Post-Acquisition Displacements is Supported By the Overall Intent of the Relocation Act.

The interpretation of the "written order" clause we advance here is by no means inconsistent with the general purpose of the Relocation Act and indeed is perfectly consistent with that purpose.

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[24] *See* HUD, RELOCATION HANDBOOK 1371.1 REV. at 4-4 (Feb. 20, 1975). Substantially the same regulations were in this HANDBOOK before revision (*see* issue of July 20, 1971 at 1-4, 6-2, 6-3; *cf.* 36 Fed. Reg. 8785-98 (May 13, 1971) (Federal financially assisted programs), as revised, 24 C.F.R. § 42.55(e) (1977).

See 49 C.F.R. § 25.11(a) (DOT relocation regulations applicable to, among others, the Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration and the Urban Mass Transportation Administration. *See id.* § 25.7 (1977))

Beginning in 1961, the Congress spent many years studying the enormous burdens that various Federal programs had imposed on persons who lost their homes, farms or businesses and who did not receive adequate compensation.[25] Particularly distressing was the plight of low-income persons, homeowners and tenants, who were frequently black or elderly or had large families.[26]

As the Congress studied the various relocation programs it had enacted, it was struck by their inconsistency and inadequacy. For example, the Highway Act provided assistance to persons who moved as a result of a Government acquisition that in fact took place, 23 U.S.C. § 511(3) (1970) *repealed* by Section 220(a) (11) of the Relocation Act, 84 Stat. 1894, 1903 (1971); thus, a change in the Government's

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[25]This extensive review began with the creation of a Select Subcommittee in 1961 to study the problem under the forceful leadership of the late Representative Clifford Davis. The subcommittee issued a "comprehensive and authoritative" report in 1964. *House Report* 2. Thereafter, an Advisory Commission on Intergovernmental Relations also issued a report and extensive hearings were held. S. REP. No. 488, 91st Cong., 2d Sess. 4-7 (1969) [hereinafter "*Senate Report*"].

[26]*House Report* 3, 12; *Senate Report* 6; 115 *Cong. Rec.* 31533 (1969), 116 *Cong. Rec.* 42137 (1970) (remarks of Sen. Muskie); 115 *Cong. Rec.* 31534 (1969) (remarks of Sen. Tydings); *id.* 6101 (remarks of Rep. Koch); *id.* 36049 (remarks of Rep. Ashley); 116 *Cong. Rec.* 40170 (1970) (remarks of Rep. Cohelan); *id.* 40171 (remarks of Rep. Bennett); *Uniform Relocation Assistance and Land Acquisition Policy: Hearings on H.R. 386 and Related Bills Before the House Committee on Public Works*, 90th Cong., 2d Sess. 356, 363-65, 371, 377, 388, 390, 393, 431, 440, 442, 487, 607, 613 (1969) [hereinafter "*House 1968 Hearings*"]; *Uniform Relocation Assistance and Land Acquisition Policies Act of 1969: Hearings Before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations*, 91st Cong., 1st Sess. 1, 23, 37, 38, 44-45, 57, 85, 111-28, 162, 165, 186-87, 198-99, 204, 207, 252, 254, 275 (1969) [hereinafter "*Senate 1969 Hearings*"]; *Uniform Relocation Assistance and Land Acquisition Policies — 1970: Hearings on H.R. 14898, H.R. 14899, S. 1, and Related Bills before the House Committee on Public Works*, 91st Cong., 1st & 2d Sess. 3, 81, 102, 188-89, 191, 197, 337, 362-63, 438, 442-43, 458-60, 471, 1032 (1969-70) [hereinafter "*House 1969-70 Hearings*"].

plans could cause serious injury to persons who dislocated their homes or businesses in reasonable reliance on the original plan. On the other hand, the earliest relocation provisions relating to housing programs, Housing Act of 1954, Pub. L. No. 560, 68 Stat. 590, 599, were not limited to acquisition situations but covered persons displaced by "any form of governmental action," including the "closing or vacating of dwellings by public officials." S. REP. No. 1472, 83d Cong., 2d Sess. 26 (1954).

It was to replace this inconsistent and inadequate patchwork that the Congress began in 1965 to develop legislation to provide a single, generous relocation program for all Government agencies. *See* S. 1681, 89th Cong., 1st Sess., 111 *Cong. Rec.* 6532 (1965). And as each new problem was examined, sections of the original bill were expanded, and new sections were added, to assure that the congressional intent would be carried out:

> —both the maximum moving expenses and the maximum replacement housing payments were increased;[27]
>
> —a new section provided that relocation assistance would not be deemed income for tax or Social Security eligibility purposes;[28]
>
> —relocation assistance was made mandatory rather than discretionary;[29]
>
> —a special definition was added to cover displacement of outdoor advertising;[30]

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[27] *Compare* 42 U.S.C. §§ 4622-24 *with* S. 1681, § 2(c), (e); *see House 1968 Hearings* 605.

[28] *See* 42 U.S.C. § 4636, no equivalent of which appeared in S. 1681; this provision first appeared as Section 211(g) of S. 1, 91st Cong., 1st Sess., *see Senate 1969 Hearings* 7, 16.

[29] *Compare* 42 U.S.C. § 4630 with S. 1681, § 7; *cf. House 1968 Hearings* 613.

[30] *See* 42 U.S.C. § 4601(7) (D), no equivalent of which appeared in S. 1681; *Senate 1969 Hearings* 253-54 (Sen. Baker).

—owners of small businesses who could not relocate without substantial loss of patronage ("Mom and Pop" stores) were given the option to accept a payment tied to average annual earnings in lieu of moving expenses;[31]

—certain cases where a State agency acquired property at the request of a Federal agency were expressly defined as being acquisitions by the Federal agency;[32]

—in States where insufficient land was available for construction of replacement housing, Federal surplus land could be given to the State;[33]

—cases in which there would be no acquisition, such as demolition of structurally unsound or vermin-infested structures, were expressly deemed to be acquisitions so that all services triggered by acquisitions would be available;[34]

—the Congress authorized Federal agencies to construct replacement housing with funds ap-

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[31]*See* 42 U.S.C. § 4622(c), no equivalent of which appeared in S. 1681; *Senate 1969 Hearings* at 79-82 (Sen. Tydings).

[32]*See* 42 U.S.C. § 4628, no equivalent of which appeared in S. 1681; *e.g., House 1968 Hearings* 475, 486-87, 568-69. Section 5 of H.R. 386 (sponsored by Rep. Cohelan), H.R. 2845, (sponsored by Rep. Waldie), H.R. 3592 (sponsored by Rep. Minish), and H.R. 5528 (sponsored by Rep. Fountain) are identical.

[33]*See* 42 U.S.C. § 4638; 116 *Cong. Rec.* 40169 (1970) (Rep. Cleveland).

[34]*See* 42 U.S.C. § 4637, no equivalent of which appeared in S. 1681; 24 C.F.R. § 42.55(f); *Senate Report* 20.

Another non-acquisition is described in the legislative history: Where a private developer acquires land to construct a building for lease to the Federal government, that, too, is deemed a Government acquisition for purposes of the Act. *See House Report* 4-5; the Comptroller General ruled that in such cases the lease is deemed an acquisition for purposes of the Relocation Act. 51 Comp. Gen. 660 (April 21, 1972).

> propriated for the project causing the displacement if replacement housing could not otherwise be made available;[35]
>
> —and, in perhaps the most expansive of all the changes made in S. 1681, a provision was added which states flatly that:
>
> "No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c) (3) of this title, is available to such person."[36]

Indeed, this last provision does not seem to turn on the existence of an "acquisition" or of " displaced persons," as that term is defined in the Act; instead, it states that "no person" can be displaced from his home by "any Federal project" unless suitable replacement housing is available. *See* pp. 34-35, *infra*.

The *House Report* referred to the Relocation Act as "a humanitarian program of relocation payments" designed to provide "positive action to increase the available housing supply for displaced low and moderate income families and individuals."[37] Senator Percy summarized the intention of the Congress as follows:

> "In public hearings the unfair treatment, inadequate payment, insufficient relocation assistance provided to those displaced is being brought out. Too often the complaints come from the very people the projects were designed to help,

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[35]42 U.S.C. § 4626(a), for which there is no equivalent in S. 1681; *House Report* 14-15.

[36]42 U.S.C. § 4626(b), for which there is no equivalent in S. 1681; *see, e.g., House 1969-70 Hearings* 370 (Rep. Jacobs); *id.* at 375, 438.

[37]*House Report* 3.

> the poor and elderly living in the inner city. They experience most severely the economic and personal effects of relocation from familiar surroundings. If there are forgotten Americans, surely these people seem to qualify.
>
> "No public project should result in financial loss or hardship to the people it displaces. Congress did not intend to place undue burdens on those forced to relocate . . . .
>
> *"We must insure that anyone who loses property or a home as a result of a public project receives fair compensation under a uniform set of procedures . . . ."*[38]

Senator Baker, now the Minority Leader of the Senate, surely was expressing accurately the intent of the Congress that had adopted the Relocation Act when he said in retrospect that "[w]herever a federal dollar reaches, there lie the rights and benefits guaranteed by the Act." 118 *Cong. Rec.* 12343 (Apr. 12, 1972).[39]

[38] *Senate 1969 Hearings* 57-58 (emphasis added).

[39] Senator Baker and his Tennessee colleague, then-Senator Brock, together with Senator Muskie, led a congressional effort in 1972 to amend the Relocation Act in response to restrictive interpretations adopted by Federal agencies. Senator Baker described the amendatory effort as follows:

> "I offered the amendment in response to an almost uncanny willingness and ability of governmental units to find ways around the mandate of the Uniform Act.
>
> * * *
>
> "New section 223 as proposed in S. 1819 is designed to make clear Congressional intent that *any* person displaced by *any* undertaking involving federal financial assistance is due the benefits of the Act . . . . *I cannot emphasize too strongly my belief that new section 223 is not an 'expansion' of the Act's coverage. It is a strict statement of what the Congress clearly intended more than two years ago, and it is necessitated only by an extraordinarily narrow and parsimonious construction of the Act by executive government at every level."*

In view of this history, it is exceedingly difficult, we submit, to exclude from the statutory definition of "displaced person" those families who are displaced by a "written order" that occurs after—and is not part of—the Government's acquisition of their homes. As with any complex statute, one can point to isolated bits of "legislative history" that suggest this or that limitation.[40] But there is

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Proposed Amendment to the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970: Hearing on S 1819 and Related Bills Before the Subcommittee on Roads of the House Committee on Public Works, 92d Cong., 2d Sess. 58 (June 15, 1972) (emphasis added). (Because of disagreements between the House and Senate over, among other things, the precise coverage of the proposed new section, the bills each house passed went to conference, *see* 118 *Cong. Rec.* 37073 (Oct. 18, 1972), but no further action was taken before the 92d Congress adjourned on October 18.)

See also Tullock v. State Highway Comm'n, 507 F.2d 712, 715, 717 n.5 (8thCir. 1974) (looking to the Act's "crystal clear" command in adopting its definition of "displaced person" rather than the "miserly" interpretation suggested by the Government); United States v. Braddy, 320 F. Supp. 1239, 1241 (D. Ore. 1971) (rejecting the Government's interpretation of the relocation provisions of the Federal-Aid Highway Act of 1968, 23 U.S.C. §§ 501-11 (1970) (repealed), because it was "too Procrustean" to serve the legislative intent).

[40]Thus, the dissent below (571 F.2d at 607-09; pp. 37A-41A) relies on the following circumstance:

The bill that passed the Senate in 1969 defined a "displaced person" as one who moved "as a result of the acquisition or reasonable expectation of acquisition" of the property. S. 1, 91st Cong., 1st Sess., § 105(1)-(5), 115 *Cong. Rec.* 31372 (1969). (The Senate had earlier struck the limitation contained in the Highway Act, *i.e.*, that benefits are payable only if the acquisition in fact takes place. *See* Federal-Aid Highway Act of 1968, Pub. L. No. 90-495 § 30, 82 Stat. 815, 834 (codified initially at 23 U.S.C. § 511(c) (1970) (repealed 1971).

The House changed the definition to read as it now reads; the reference to "reasonable expectation of acquisition" was replaced by the "written order" clause. No Representative explained the new language, nor did the *House Report*, except in commenting (at p. 4) that "if a person moves as the result of such *notice* to vacate, it makes no difference whether or not the real property is actually acquired," (emphasis added). Likewise, the Administration commented — in a

"no ambiguity in this Act to be clarified by resort to legislative history." *Packard Motor Car Co.* v. *NLRB*, 330 U.S. 485, 492 (1947). We urge the Court to interpret the Act in accordance with the clear and precise language which Congress employed and to be faithful to the generous purpose Congress sought to achieve by holding that the definition of "displaced person" is not to be limited to cases in which the "written order" that causes displacement precedes the Government's acquisition of the property.

II. The "Written Order" To Vacate Which HUD Issued in this Case Was Issued "For" a Federal "Program or Project."

The District Court found that HUD evicted the plaintiffs from Sky Tower "for" a Federal "program or project", namely, the demolition of the buildings by HUD to "eliminate blight" and to make way for the construction of

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memorandum submitted for the record by Senator Percy, 116 *Cong. Rec.* 42139 (1970) — that

> "[t]he House bill would limit the status of displaced persons to those who move as the result of the acquisition of, *or written notice to vacate* real property. The Senate version would provide a broader definition which includes those who move as the result of acquisition or reasonable expectation of acquisition." (Emphasis added.)

Clearly, the House bill *is* narrower with regard to pre-acquisition displacements, for it is only when a "written notice" is issued that benefits are payable; Congress evidently preferred to have a precise triggering event rather than open the door to fact-oriented claims that persons moved in "reasonable expectation of acquisition," with the consequent difficulties of administration. *House 1969-70 Hearings* 137, 416, 1027-28. Carrying out this congressional intent, the HUD and DOT regulations cited at pp. 18-19, *supra*, likewise limit assistance in pre-acquisition situations to cases in which a *written notice* of intent to acquire is issued.

But this bit of legislative history says nothing about the meaning of the term *written order* as it applies to post-acquisition displacements. Accordingly, it does not undercut the points we have made. *See* 571 F.2d at 597-98 n.32; pp. 14A-15A n.32.

middle-income homes in conformity to the District of Columbia master plan. 396 F. Supp. at 1236.[41]

This is unquestionably a correct finding, which the Court of Appeals affirmed under the principles of FED. R. CIV. P. 52(a). (571 F.2d at 595-96; p. 11A)

An affidavit by the director of HUD's area office in the District of Columbia indicates that, commencing more than a year before it issued the eviction orders, HUD undertook "protracted and detailed studies" to determine the disposition for the Sky Tower properties that "would best discharge the Secretary's duty within the contemplation of 12 U.S.C. 1713(*l*)," the statute that authorizes the Secretary of HUD to manage, develop or take other action with respect to acquired insured housing, and within the "statutory and regulatory parameters of Section 236 of the National Housing Act, as amended." (App. 51-52) These studies began more than a year before HUD issued the eviction orders, and indeed HUD's *Property Disposition Handbook*, referred to at p. 7, *supra*, expressly requires that, wherever possible, such studies begin before the Government acquires title to an insured project.

The demolition alternative ultimately chosen was designed to achieve several governmental purposes for the benefit of the public, in the opinion of this HUD official:

> "a. This decision, in my view, provided the most economical, feasible and environmentally sound means of providing the area with low density, low income housing that meets with the city's objectives in its master plan (Washington Far Southeast '70).

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[41] It is true that Judge Gesell ruled that HUD's decision to demolish Sky Tower was irrational and contrary to law. 389 F. Supp. at 102. But this ruling certainly does not mean that the orders to vacate were thereby *not* pursuant to a Federal program or project.

"b. Departmental studies concluded that the cost of rehabilitation under the alternative plans we had considered would be excessive, and would be non-productive as an effort to make this excessively blighted area a safe and decent place for low income families.

"c. In my view, the four other alternatives suggested for disposing of the project could not outweigh the proper interest of the Secretary in placing the property in a condition which afforded the most reasonable expectation of accomplishing the goal of providing the residents of the area with a decent environment and safe living conditions which dictated the removal of this ill-conceived project." (App. 52)

The Government argued in the Court of Appeals that the disposition originally planned for Sky Tower at the date of the displacements—demolition, with the property to be used for construction of single-family homes—was not a "program or project" under Section 101(6) because the Act applied solely to construction projects and not to demolition projects. The court flatly rejected this effort to constrict the broad reach of the statute:

"Although there is some suggestion in the government's brief that a 'program or project' means only 'a federal construction or rehabilitation project, such as public works or urban renewal,' there is no warrant in the statute for this limiting interpretation. Obviously, construction and rehabilitation projects will frequently be preceded by demolition. If the government means that demolition is a 'project' within the Act when the agency constructs a building in its place but not when the agency simply tears down without building up, the anomaly is obvious. HUD's man-

> date is to increase the stock of decent, sanitary housing for low-income families—not to destroy existing housing. Congress clearly did not intend that tenants displaced by a simple decision to wreck their homes would receive less protection than tenants displaced by a constructive urban renewal project." (Footnote omitted.) (571 F.2d at 595; p. 10A)[42]

The Government also argues that the pertinent Federal "program or project" is the one that existed at the time of *acquisition* and that the evictions must be for *this* program or project before Relocation Act services are available; it goes on to argue that the acquisition of Sky Tower was not a conscious Government decision, was therefore not for a program or project, and could not have triggered a right to Relocation Act assistance.

In part this argument follows from the Government's position that the "written order" clause applies only in anticipation of the acquisition. We have shown in Part I that on this point the Government is in error and that a "written order to vacate" properly follows rather than precedes an acquisition.

The Government is likewise in error in contending that the evictions must be pursuant to the program or project that led to the acquisition. As the Comptroller General has ruled, the time to determine whether Relocation Act services are available is when the tenants are evicted, not when the acquisition occurred. 52 Comp. Gen. 300, 304 (Nov. 28, 1972).

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[42]Judge Wilkey considered the interpretation limiting coverage to construction projects and excluding demolition projects to be so "simple-minded" and "clearly flawed," that he took pains to show that the Government could not have intended to make this argument. (571 F.2d at 605-07; pp. 33A-36A)

It follows that whether the acquisition was for a Federal program or project is not pertinent to whether Relocation Act assistance is available at the time of eviction. If it is important, however, that the acquisition have been pursuant to a Federal program or project and that the subsequent evictions be somehow related to that program or project, this condition is satisfied in this case. The acquisition was a fully expected and consciously planned-for result of the Section 236 program:

Section 236 was added to the National Housing Act, originally enacted in 1934, by the Housing and Urban Development Act of 1968, Pub. L. No. 90-448, 82 Stat. 476, 498 (codified at 12 U.S.C. § 1715z-1 (1976)). Its purpose was to provide a new method for carrying out the 1934 Act's policy of providing housing for low-income families. This would be accomplished by attracting private mortgage investment into the low-income housing market, thus reducing the direct expenditure of Federal dollars. The Federal Government (through HUD) would not only insure mortgage loans made for the specified purpose but would also pay interest supplements in order to reduce the mortgagor's effective annual interest rate to one percent. To qualify for this assistance, the mortgagor would have to agree to limit rents to a maximum of 25 percent of tenants' income, although rents could not be lower than a "basic rental charge" computed on the basis of the one percent interest rate.

The interest subsidy feature would of course require appropriations of Federal funds each year, but Congress also determined that the insurance program would require funding. Although the Section 236 program would require the payment of insurance premiums, this new program would be unlike other Federal insurance programs in that net losses were fully expected.[43] A Special Risk Insurance Fund

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[43]Compare, *e.g.*, the Section 203(b) home mortgage insurance program (12 U.S.C. § 1709) and the Section 207 rental insurance

was established, and appropriations were expressly authorized to keep the Fund solvent. 12 U.S.C. § 1715z-3. As the Senate Report put it:

> "Section 104 of the bill would establish, through a new Section 238 of the National Housing Act, a 'Special Risk Insurance Fund,' *which would not be intended to be actuarially sound* and out of which claims would be paid on mortgages insured under the new [section] . . . 236—assistance for rental and cooperative housing . . . .
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> * * *
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> "Since these programs *cannot be expected to be operated on an actuarially sound basis* if the insurance premium charge is to be set at a reasonable level, appropriations to the fund would be authorized to cover any losses sustained by the fund in carrying out the mortgage insurance obligations of these programs . . . . [I]t is intended that the Secretary be able to obtain appropriations to cover anticipated or projected losses as well as actual losses, in order to provide adequate operating funds during the long period required to liquidate properties." S. REP. No. 1123, 90th Cong., 2d Sess. 15 (1968) (emphasis added).

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program (12 U.S.C. § 1713), which HUD operates "on a self-sustaining basis." HUD 1969 ANNUAL REPORT, p. 41.

Likewise, compare the housing investment guaranty program, operated by the Agency for International Development pursuant to the Foreign Assistance Act of 1961, Pub. L.No. 87-195, 75 Stat. 424, which is financed by guaranty fees and "operates without cost to the U.S. taxpayer." Baruch, *The A.I.D. Housing Guaranty Program*, STUDY OF INTERNATIONAL HOUSING, SUBCOMM. ON HOUSING AND URBAN AFFAIRS OF THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS, 92d Cong., 1st Sess. 1 (1971).

The Conference Report for the Special Risk Fund repeated the theme that Congress anticipated that the Section 236 program would encounter excessive costs. The Report made it clear, however, that the substantial assistance that would be provided by the new housing programs to low-income families was worth the anticipated special costs. The Report deleted a provision in the House bill that would have imposed "an annual business-type budget" on the Special Risk Fund. HUD was left solely with the admonition in the Report that it "give particular emphasis to this Fund in its annual reports and maintain its accounts in such a way that experience under this program can be readily evaluated." H.R. REP. No. 1785, 90th Cong., 2d Sess. 152 (1968).[44]

Thus, default acquisitions by HUD under the Section 236 program—the program involved in this case—were expressly contemplated, are the subject of appropriations, and carry out the social policies of the National Housing Act. Although it has been held that Government acquisitions that are "random and involuntary" are not "acquisitions" within the meaning of the Relocation Act, *Caramico* v. *Secretary of the Dep't of Housing and Urban Dev.*, 509 F.2d 694 (2d Cir. 1974), that is assuredly not true where a Section 236 default occurs.[45] As the record in this

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[44]It is significant that in its first set of internal regulations for the Section 236 program, HUD specifically anticipated that "a mortgagee may be requested to assign its mortgage to FHA." Under these circumstances, it was determined that claims would be "paid in cash from the Special Risk Insurance Fund." RENTAL HOUSING FOR LOWER INCOME FAMILIES (SECTION 236), FHA 4442.1, at 3 (Oct. 1968).

[45]In *Caramico*, following default and foreclosure, HUD acquired certain residential properties for which it had insured the mortgages under 12 U.S.C. § 1709. A related insurance provision, 12 U.S.C. § 1710, provided that in the event of default and foreclosure under the Section 1709 program, the mortgagee would receive the benefit of the insurance provided by FHA if the mortgagee promptly conveyed title to the property to FHA in compliance with FHA regulations. At the time the property in *Caramico* was insured, pertinent FHA regulations required

case shows, moreover, and as the District Court found, the acquisition of Sky Tower was definitely voluntary and deliberate. (*See* pp. 5-7, *supra.*)

Finally, as we have pointed out (pp. 26-29, *supra*), the disposition program that led to the decision to demolish Sky Tower was not wholly separate from the program that led to its acquisition. HUD's *Property Disposition Handbook* contemplates that HUD will begin considering disposition alternatives *before* it acquires the property, and the statute under which those alternatives are considered (12 U.S.C. § 1713(*l*)) expressly relates to disposition of insured housing projects which HUD has acquired.

In short, if it is necessary that the acquisition as well as the displacement be for a Federal program or project, that standard is satisfied in this case.

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that following default and foreclosure the mortgagee tender possession of the property, unoccupied, to FHA. *See* 24 C.F.R. § 203.381 (1977).

Pursuant to the statute and regulations, the mortgagee required the tenant-plaintiffs in *Caramico* to vacate the property in order to fulfill the FHA insurance eligibility requirements. The Second Circuit found under these circumstances that the default aquisition by the FHA under 12 U.S.C. § 1709 was not the kind of "acquisition for a program or project" contemplated by the Relocation Act since it embodied "no conscious governmental decision," and was "involuntary" and "random." 509 F.2d at 698-99. The Court held:

> "In sum, we believe that Judge Dooling was correct in holding that random acquisitions by the FHA of defaulted property are not acquisitions 'for a program or project undertaken by a Federal agency' within the contemplation of the drafters of the Relocation Act." 509 F.2d at 699.

We believe that the Second Circuit's interpretation of the Act, and its guiding principle of "voluntariness" are not supported in the statute and are antagonistic to the principles of uniformity and fairness expressed in the statute and pervasive in the statute's legislative history. Nonetheless, it is not necessary in this case for the Court to review the correctness of the *Caramico* ruling.

III. Suitable Replacement Housing Must Be Available Before Anyone, Even If Not Within the Definition of "Displaced Person," May Be Evicted From His or Her Dwelling For Any Federal Project.

It is clear from the facts that HUD evicted the Sky Tower tenants without being assured that suitable replacement housing was available. This violated the plain terms of Section 206(b) of the Relocation Act, 42 U.S.C. § 4626(b), which provides:

> "(b) No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal Agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person."

It is important to note that this section of the Act does not limit itself to persons who meet the definition of "displaced person" contained in 42 U.S.C. § 4601(6). Section 4626(b) enjoins that "no person" may be displaced from his or her dwelling because of "any Federal project" unless replacement housing is available. And by its cross reference to Section 4625(c)(3), this section defines replacement housing to mean housing that is not only "decent, safe, and sanitary," not only equally accessible to public utilities and other facilities, but also

> "at rents or prices within the financial means of the families and individuals displaced."[46]

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[46] The full text of 42 U.S.C. § 4625(c)(3) reads as follows:

> "(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to —

By the enactment of Section 4626(b), Congress made it unmistakably plain that apart from particular specialized provisions it had written into other sections of the Act — such as keying relief for businesses or farms to "acquisitions" — there was to be no Federal displacement of people from their *homes* unless there was someplace else they could live that would be within their means and would not impose other heavy burdens.

There is no "legislative history" that explains this section, and no case has construed its language. There is therefore no basis not to apply it according to its plain terms. It may be suggested that the Court read into this section the definition of "displaced person." But to repeat: That phrase is *not* used in Section 4626(b). In the absence of compelling evidence to the contrary, it must be presumed that Congress intentionally included that phrase in other sections and just as intentionally did not include it here.

The consequence of HUD's violation of Section 4626(b) is that families were evicted from Sky Tower when they should not have been. Requiring HUD to remedy its error by placing the tenants in decent, affordable housing as promptly as possible and reimbursing them for losses they have suffered in the meantime is an eminently suitable result.

"(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived."

CONCLUSION

The decision of the Court of Appeals for the District of Columbia Circuit should be affirmed, with costs.

JOHN VANDERSTAR
THEODORE VOORHEES, JR.
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006
Attorneys for Respondents

Of Counsel:

FLORENCE WAGMAN ROISMAN
National Housing Law Project
1025 Fifteenth Street, N.W.
Washington, D.C. 20005

ADELAIDE MILLER
Neighborhood Legal Services Program
3016 Martin Luther King Avenue, S.E.
Washington, D.C. 20032

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